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EFFECTIVE NATIONAL AND INTERNATIONAL ACTION AGAINST: (a) ORGANIZED CRIME; (b) TERRORIST CRIMINAL ACTIVITIES

Proposals for concerted international action against forms of crime identified in the Milan Plan of Action

Report of the Secretary-General

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INTRODUCTION

1. The Economic and Social Council, in resolution 1986/10, section I, of 21 May 1986, urged the Secretary-General to accord priority to the development of specific proposals to co-ordinate concerted international action against the forms of crime identified in the Milan Plan of Action, 1/ and to transmit such proposals to the Committee on Crime Prevention and Control at its tenth session. In addition, the General Assembly, in resolution 41/107 of 4 December 1986, invited Member States and the Secretary-General, in implementing the results of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to accord priority attention to the forms of crime identified in the Milan Plan of Action. This request for priority was reiterated in Economic and Social Council resolution 1987/53 of 27 May 1987 and in General Assembly resolutions 42/59 of 30 November 1987, 43/99 of 8 December 1988 and 44/72 of 8 December 1989.

2. The present report contains a preliminary analysis of the phenomenon of transboundary criminality, together with suggestions for concerted international action, as requested by Economic and Social Council resolution 1989/62 of 24 May 1989. This report updates the information contained in the document that was originally submitted to the Committee on Crime Prevention and Control at its tenth session (E/AC.57/1988/16), for consideration by the Eighth Congress, under provisional agenda items 3 and 5.

3. In addition to identifying five clusters of criminal phenomena whose consequences have a transboundary character, the report also summarizes a number of international initiatives directed at coping with the unique challenges resulting from the internationalization of criminal activities. In the light of recent developments, it appears that none of these initiatives has been either sufficiently comprehensive or incisive to have an impact on the problems at hand. This inadequacy seems to derive from a variety of factors, such as the political and juridical heterogeneity that characterizes the contemporary world and the reliance on centuries-old constructs that have regulated the relations between countries, such as sovereignty and territorial jurisdiction.

4. It is thus becoming more and more evident that intensified international co-operation is a major and indispensable component of the struggle against international criminality. Such co-operation may take a variety of forms, and can be organized in different ways to address particularly serious priority issues. To be effective, however, it requires not only a reformulation of entrenched traditional concepts, but also realism and commitment. The United Nations could play a decisive role in this respect, helping to facilitate new developments and more reliable policy options.

5. An alarming increase in transnational criminal activities has taken place in recent decades. This new international dimension of crime has emerged, to a considerable extent, as the reflection and outcome of modern advances in electronic and transportation technologies, which have brought about the development of instant communication over great distances, as well as the massive displacement of goods and persons. Thus, licit international trade and commerce and world-wide travel have been paralleled by the rapid growth of an international criminality that utilizes the same means of transport and communication. The transnational expansion of criminal and harmful activities has rapidly become a major source of concern for the international community. Its negative consequences on national and international social, political and economic structures and processes, and the apparent inadequacy of current prevention and control mechanisms to deal with this kind of transboundary phenomenon is becoming a source of grave concern.

6. In response to this mounting preoccupation, the Milan Plan of Action 1/ recommends, inter alia, that priority should be given to combating terrorism, in all its forms, through co-ordinated and concerted action by the international community, and that a major effort to control and eradicate the illicit drug traffic and organized crime be undertaken. The Milan Plan of Action further affirms, inter alia, that crime is a major problem of international dimensions, demanding a concerted response from the international community, and urges the extension of technical co-operation activities to help developing countries to cope with this threat.

7. The Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, also adopted by the Seventh Congress, 2/ formulates recommendations for national, regional and international action. Many of these recommendations are, directly or indirectly, closely related to the issues of transnational criminality discussed in the present report, such as harmful crimes (principle 6), criminal negligence in matters pertaining to public health, the exploitation of natural resources and the environment (principle 7), economic crime (principle 8), corporate responsibility (principle 9) and international co-operation in crime prevention and criminal justice (principles 36 to 47).

8. Furthermore, the Seventh Congress also approved by consensus the following resolutions: 1 on organized crime; 2 on the struggle against illicit drug trafficking; 3 on international co-operation in drug abuse control; 5 on technical co-operation in the field of crime prevention and criminal justice; 22 on crime prevention in the context of development; and 23 on criminal acts of a terrorist character. 3/ These and other decisions and resolutions of the Seventh Congress were unanimously endorsed by the General Assembly in its resolution 40/32 of 29 November 1985.

I. INTERNATIONAL ASPECTS AND DIMENSIONS OF CONTEMPORARY CRIMINALITY

9. The term "international crime" is generally used in relation to violations of established international conventions, whereas "transnational crime" is an expression used to cover, in a less formal manner, a much wider area of illicit conduct. This difference notwithstanding, the two terms will be used more or less interchangeably in this report.

10. The growing internationalization of crime is the result of the extension of operations to foreign countries by criminal organizations or other entities. It may result from more or less formal co-operative agreements establishing extensive transnational networks in which two or more nationally based organizations come together. In other cases, the international character reflects the nature of the transactions, as when illegal goods and services are exported or imported. The internationalization may also be the consequence of natural forces, such as wind and water, that "export" the results of licit or illicit undertakings.

11. Crimes and harmful acts possessing an international character may be grouped in five clusters, as follows: (a) internationally organized, mafia-type crimes with profit as the ultimate aim; (b) terrorist activities of a transnational nature; (c) economic offences involving operations and transactions in more than one country; (d) transnational illicit trade in art objects belonging to the cultural and religious patrimony of a nation; and (e) activities that, through pollution or otherwise, affect the ecological balance and environmental viability of more than one country.

A. Organized crime

12. The term organized crime usually refers to large-scale and complex criminal activities carried out by tightly or loosely organized associations and aimed at the establishment, supply and exploitation of illegal markets at the expense of society. Such operations are generally carried out with a ruthless disregard of the law, and often involve offences against the person, including threats, intimidation and physical violence.

13. In the past, organized criminality was rarely considered a problem outside the society in which it was rooted. In the last few decades, however, it has come to the forefront of the attention of the international community because of the transnational ramifications of drug trafficking. Criminal organizations have projected their ability to inflict social damage by exploiting the demand for drug consumption in societies other than their own. These organizations have become international enterprises by virtue of their transnational dealings and the assets and influence derived from the unprecedented profits of drug trafficking. 4/

14. More specifically, the increasing internationalization of crime is evidenced by the extension of its operations to additional developed countries, 5/ and a much larger number of developing countries, both as new sources and as new markets for the goods and services provided by the criminal organizations, 6/ and its emergence in Eastern European countries. 7/ The damage inflicted on the economic apparatus, political system and social stability of all affected countries is destabilizing, particularly for the more vulnerable and fragile structures of developing countries. 8/

15. Organized crime networks are extremely effective in reducing detection and increasing overall profitability. While rivalry over the monopoly of certain markets and the absence of arbitration mechanisms may on occasion erupt in violent gang wars aimed at the elimination of competitors, these internal conflicts seldom succeed in undermining the division of labour and the overall power and organizational structure of organized crime.

16. Illicit world markets permit the exchange of a large variety of illegal goods and services. In this process, the management of the criminal operations involved has come to resemble closely the methods and techniques of contemporary business enterprises. This application of modern management techniques to the perpetration of criminal undertakings has further increased the overall efficiency of the entire criminal network, a fact reflected in the very high levels of profit yielded by these activities. In one major industrialized country, for instance, the net income of organized crime, that is to say, the gross revenues less such overhead costs as salaries, transportation, entertainment and payoffs, was, in 1986, conservatively estimated, by an official commission, to amount to $US 30 billion a year. 9/

17. The transnational activities of organized crime include, inter alia, illicit drug trafficking; traffic in persons for the purposes of sexual enslavement or economic exploitation and, increasingly in recent years, illegal adoption of children; large-scale counterfeiting, illicit currency manipulations, illegal transfer of capital and of unlawfully acquired assets, fraudulent bankruptcy and large-scale maritime insurance fraud; smuggling; and certain modern versions of piracy. 10/ The near future may witness substantial additions to this list, as new fashions emerge and as technological advances continue.

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18. International efforts to combat organized criminality are still in a nascent stage. Although at the national level most of the conduct engaged in by organized crime is subject to existing substantive criminal norms, on an international scale most of this anti-social conduct is yet to be defined as an international offence.

19. At the national level, experience indicates that organized crime is a problem caused not so much by the absence of substantive and procedural criminal law but by public apathy, official acquiescence in and connivance with criminal activities through the corrupting influences of organized crime. The problem is compounded by the bureaucratic divisions of the various criminal justice system agencies, the gaps between the components of the system, and their general inefficiency and ineffectiveness.

20. Two common negative consequences of the international operations of organized crime require special attention: massive and widespread corruption, and large-scale infiltration of legal business.

21. With respect to corruption, bribery of public officials at all levels and of influential politicians is a favourite instrument employed by organized crime in its drive to ensure protection and escape detection, and to avoid disruption of its international activities. The destructive impact of these practices on the moral fabric of the societies affected can hardly be exaggerated. Thus, widespread corruption destroys all sense of duty among the public officials involved and results in the demoralization of the general public. The rule of law is weakened and an opportunistic attitude gains the upperhand.

22. The control of corruption, whether associated or not with the transnational activities of organized crime, must be seen, therefore, as one of the major tasks in the struggle against criminality. The difficulties encountered in this endeavour are considerable, particularly in view of the key positions occupied by the beneficiaries of corruption within the national administrations and political structures of some countries, a fact tending to neutralize many prevention and control programmes.

23. The infiltration of legitimate businesses serves as an additional risk-reduction tactic. It is designed to satisfy the pressing need of organized crime to launder at least part of the huge profits yielded by their national and international operations. It has been determined that only the smaller part of such profits is used for the continuation of the criminal activities in question and that the larger share, channelled through off-shore financial centres, goes into overseas holdings and is absorbed in the international flow of capital. 11/ Finally, the penetration of legitimate business operations, in particular those engaged in international commerce, offers organized crime less risky transportation channels for their illicit merchandise.

24. Bank secrecy, as provided by certain countries, represents a powerful obstacle to the detection of illegal funds. To this has to be added the possibility of opening anonymous bank accounts, as permitted in several countries.

B. Criminal acts of a terrorist character

25. For present purposes, international terrorism may be described as terrorist acts, the author or authors of which plan their actions, are directed or come from, flee to and seek refuge in, or otherwise receive any form of assistance from a country or countries other than the one in which the acts themselves take place.

26. In a world characterized by instant communication, rapid technological change and increasing geographical mobility, the opportunities and means for such acts have multiplied. At the same time, the impact and lethal nature of terrorist attacks have greatly increased as a consequence of certain developments in weaponry and explosives. Terrorist groups are becoming increasingly sophisticated and have succeeded, thanks to the assistance of some Governments, in acquiring chemical and other weapons and in using advanced electronics in their equipment. 12/ In spite of the considerable resources allocated by governmental authorities to their prevention and control, a proliferation of such activities has occurred in recent decades. 13/

27. Attempts at devising international mechanisms capable of coping with the challenge of terrorism were initiated before the Second World War. Thus, after the assassination of King Alexander of Yugoslavia and the French Foreign Minister, Louis Barthou, at Marseilles, in 1934, the Council of the League of Nations established a committee of experts to study the problem. The resulting International Conference on the Repression of Terrorism adopted a Convention against Terrorism on 16 November 1937, the Protocol to which contained a statute for an international criminal court. "It was the first time that an international convention set aside the dogma of sovereignty of States to establish the supremacy of international penal judgements which previously had been the exclusive province of national jurisdictions." 14/ The Convention, unfortunately, never entered into effect, since it was ratified by only one country.

28. The Fourth Congress, in 1970, dealt with the increased terrorist activity, although the topic was not contained in the formal agenda. Thus, hijackings and kidnappings as a means of obtaining unlawful concessions from Governments were mentioned in the discussion as examples of new and emergent forms of crime. 15/

29. By the time of the Fifth Congress, in 1975, the marked increase in terrorist activities in the intervening years motivated the inclusion of the subject in the agenda (item 5): "Changes in the forms and dimensions of criminality - transnational and national". In the discussion of the subtopic dealing with terrorism, it was emphasized that international terrorism, of whatever kind, was an area of concern to the United Nations. There was also agreement that measures should be studied with a view to strengthening criminal justice by: (a) extending universal jurisdiction to all such crimes, as was already the case for air piracy, especially if they endangered the lives of innocent persons; (b) ensuring the observance of extradition laws; (c) reinforcing the operational capacity and technical co-operation of the International Criminal Police Organization (Interpol) through mutual exchange of information and assistance. 16/

30. The internationalization of terrorist activities has occurred against a background of tension and conflicts between countries, and often in conjunction with unresolved grievances on the part of ethnic or social groups, which feel, rightly or wrongly, that their legitimate aspirations are being denied by the prevailing political structures and by the existing distribution and relations of power within a given society. It is precisely this context that appears to constitute the major obstacle to the establishment of effective international co-operation for the eradication of transnational terrorism. 17/ This is particularly alarming in view of growing evidence indicating the establishment of much closer international co-operation between terrorist organizations.

31. The greater efficiency and destructive power evidenced by terrorism in recent years and the greater operational capability attained through the international co-ordination of terrorist groups 18/ constitute a particularly dangerous development in view of the marked vulnerability of contemporary society to carefully aimed acts of sabotage. This is, in part, the outcome of the growing reliance of complex systems on electronic information processing. The application of electronic systems has become so widespread for military operations and other applications that modern social and economic order is becoming unthinkable without it. This extensive reliance on ever more rapid and more efficient computers, which is having a positive impact in many areas of human society and in numerous countries, can be exploited by terrorist organizations to wreak havoc on the social order. As computer experts, known as hackers, have demonstrated, in recent years, nothing guarantees that terrorists cannot penetrate the most protected system and cause widespread chaos and even loss of human life. 19/

32. One of the main objectives of terrorist organizations is the publicity obtained by their attacks. As a result, the visibility of the target adds propaganda value to the enterprise. It is, therefore, indispensable to ensure the co-operation of the mass media, in so far as sensationalistic reporting reinforces the motivation and ruthlessness of terrorist groups. 20/

33. Terrorists have often claimed to be soldiers instead of criminals, forced by circumstances into an unconventional mode of war but, none the less, entitled to the same privileges extended to recognized combatants. This is not a valid argument, since the Geneva Conventions on rules of war grant civilians who do not take part in hostilities immunity from deliberate attack, a prohibition often flaunted by terrorists. In addition, the Geneva Conventions prohibit taking hostages and require combatants to wear uniforms or insignia identifying them; two rules that are frequently ignored by terrorists.

34. In spite of the difficulties encountered by the attempts to establish effective co-operation mechanisms for the prevention and control of transnational terrorism, the United Nations system has had some success in creating international instruments aimed at the prevention of certain forms of this phenomenon. 21/ Thus, the International Civil Aviation Organization (ICAO) adopted the Convention on Offences and Certain Acts Committed on Board Aircraft, known as the Tokyo Convention, in 1963; 22/ the Convention for the Suppression of Unlawful Seizure of Aircraft, known as The Hague Convention, in 1970; 23/ and the Convention for the Suppression of Unlawful Acts against the Safety of Civilian Aviation, known as the Montreal Convention, in 1971. 24/ Furthermore, the General Assembly, by resolution 3166 (XXVIII), annex, of 12 December 1973, adopted the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; and, by resolution 34/146, annex, of 17 December 1979, the International Convention against the Taking of Hostages. The International Atomic Energy Agency concluded the Convention on the Physical Protection of Nuclear Material in 1980.

35. In addition, three conventions with a regional scope have been adopted for the purpose of combating transnational terrorism: the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, known as the Organization of American States (OAS) Convention, of 1971; the European Convention on the Suppression of Terrorism, known as the European Convention, of 1971; and the Agreement on the Application of the European Convention for the Suppression of Terrorism, known as the Dublin Agreement, of 1979.

36. The central disposition of the international conventions obligates a State that apprehends an alleged terrorist in its territory to either extradite him or her or to submit his or her case to its own authorities for prosecution, the latter course being followed when extradition fails (aut dedere aut judicare). The conventions also obligate the parties to take steps towards apprehending the accused and hold them in custody. Thus, the main objective of these provisions is to ensure that the alleged offender is prosecuted. The obligation is not so much to try the accused as to submit the case to the appropriate prosecuting authority. Consequently, if the criminal justice system of a particular country lacks independence there exists a considerable possibility of political intervention in preventing the trial, the conviction or the implementation of the punishment. Moreover, even if the criminal justice system does function independently, and without political interference, it may still be extremely difficult to obtain the evidence needed to convict somebody for a crime committed in a foreign country.

37. It is important to note that none of the conventions eliminates fully the political offence exception to extradition. Article 7 of the Hague Convention, for example, requires a State party, if it does not extradite an alleged offender, to submit his or her case to its competent authorities for the purpose of prosecution, and those authorities are to treat the case "... in the same manner as in the case of any ordinary offence of a serious nature under the law of that State". But a State party to The Hague Convention can decide not to extradite an alleged offender for any reason whatsoever, including its view that the offence was political in character.

38. Of the three regional instruments, the OAS Convention has been largely superseded by the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. In any case, although its key provisions are on extradition or punishment of alleged offenders under national legislation, the long-standing regional tradition of asylum has often undermined any real chance of extradition taking place. A more serious shortcoming is that if a State decides against a request for extradition, it is totally free to refuse, without violating the Convention, to prosecute an alleged offender.

39. The European Convention attempts to define more narrowly the applicability of the political offence exception to activities of a terrorist nature, such as hijacking, kidnapping, hostage-taking and the use of explosives. Further, it creates the obligation for the State party to the Convention to submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution in instances where it has refused to extradite the alleged offender. In attempting to exclude various common crimes, as well as terrorism, from the political offence exception to extradition, however, the Convention has met with considerable resistance among State parties, which, upon signing or ratifying it, have reserved the right to refuse to extradite for an offence that they consider political.

C. Economic crimes

40. Economic crimes were examined by the Fifth Congress, in 1975, as a subtopic of agenda item 5: "Changes in the forms and dimensions of criminality - transnational and national". The discussion of the issues raised by economic criminality led to the conclusion that more effective control over abuses by national and transnational enterprises could be achieved by the following: (a) establishment of national securities and exchange commissions and, possibly, the establishment of a similar body at the international level; (b) legislation against national and transnational abuses of economic power in

the exercise of commercial activities by national and transnational enterprises; (c) greater participation of shareholders in the affairs of major corporations or of workers in public enterprises; (d) provision of more information on economic criminality by such bodies as commissions of inquiry, consumer groups and labour unions; and (e) initiation of special studies on corruption and smuggling, in view of their extremely detrimental effect on national economies and international trade, particularly in developing countries.

41. Five years later, at the Sixth Congress, the issue of economic crimes was subsumed under agenda item 5: "Crime and the abuse of power: offences and offenders beyond the reach of the law". In this connection, the Sixth Congress adopted resolution 7, which recommends, inter alia, that effective strategies should be developed internationally, regionally and nationally to prevent, prosecute and control such abuses. The resolution also recommends that co-operative efforts between Member States to prevent, prosecute and control abuses of economic and political power that extend beyond national boundaries and territorial jurisdictions should be intensified. These efforts should include mutual legal assistance treaties or conventions establishing procedures for the gathering of evidence and the extradition of persons. 25/

42. Two sorts of offences are customarily subsumed under this category. First, the category includes harmful acts or crimes committed by one or more persons for the purpose of maximizing, maintaining or obtaining economic profit for the legally constituted multinational corporations for which they work, and with the knowledge and tacit or explicit approval of higher policy-making or decision-making officials within the established corporate structure, such as managers or directors. In this area, there is substantial work in progress on the part of the Commission on Transnational Corporations of the United Nations. Secondly, the category may also include offences committed by private persons, who represent their activities as bona fide financial or commercial operations, whereas their conscious intent is to defraud individual investors, public or private institutions, or Governments, and the operations involved are undertaken or carried out in a transnational context. Some of the activities of organized crime fit this pattern.

43. As far as multinational or transnational corporations are concerned, the size and volume of the operations of some unavoidably provide them with the economic power that, when wielded by unscrupulous corporate officials, may easily be transformed into an effective instrument of pressure against uncooperative government officials. Thus, the threat to terminate a certain operation, or to withdraw or withhold certain investments, may force public administrators to ignore serious violations of the law or of the constitutive contract between a national Government and the corporation involved.

44. In numerous cases, transnational economic criminality concentrates on income tax evasion by, inter alia, the falsification of import or export invoices. This is very often a far more serious problem for developing countries than for developed ones, where the scarcity of properly trained personnel is a major obstacle to effective detection. Moreover, the currencies of those countries are dangerously weakened by the circumvention of foreign exchange controls.

45. The majority of operations undertaken by transnational corporations or by international actors of a non-corporate nature are legal and quite often represent an asset for the receiving countries, the economies of which are substantially reinforced by the corresponding investments. This should not lead, however, to an under-evaluation of the massive damage inflicted by

criminal operators. Since the victims are often developing countries, the operations in question frequently undermine vital development programmes. Furthermore, these criminal operations are very frequently associated with corruption, thus leading to negative consequences identical to those indicated in the case of organized crime, i.e. malfunctioning and inefficiency of the State apparatus, widespread demoralization, political instability and the wholesale undermining of the basic structures of social life. 26/

46. One additional phenomenon associated with economic criminality, both national and transnational, is the emergence of what are referred to as computer crimes. 27/ It has become obvious in recent years that the rapidly increasing utilization of computer technology and world-wide computer networks as an integral part of contemporary international financial and banking operations has created conditions that greatly facilitate criminal economic operations within and between countries. Such misuses are certainly not restricted to economic offences, as was indicated above with respect to terrorist activities. Some experts believe that almost all crimes, with the exception of rape but including murder, could be committed by means of the available computer technology and its ever-widening applications. 28/

47. The abuse of computers as a modality of economic crime is undergoing a very rapid increase. Thus, one major industrial country reported 7 such offences in 1985 and 174 in 1986. Although it is difficult to imagine that such a rate of growth will continue unabated, the potential damage to orderly international economic transactions is evident and alarming, in view of the massive volume of international financial operations carried out daily through electronic fund transfers.

48. Another source of concern is the difficulty of detecting such offences. A good computer specialist can erase most traces of his or her activities. Another characteristic of computer criminality is that, thanks to the existence of world-wide satellite communications networks, such crimes can be committed in fractions of seconds, while their detection, not to mention the corresponding investigations, may take weeks, if not months, thus providing the offender with valuable lead-time.

D. Crimes against the environment

49. Serious and sometimes irreversible damage to the environment, such as various forms of massive air, water and land pollution, is being recognized as a matter of international concern when its destructive impact makes itself felt beyond the borders of the country of origin. Thus, the massive use of chemical herbicides, detergents and inorganic fertilizers, the release of large amounts of gases in the atmosphere, the careless and indiscriminate disposal of poisonous and radioactive industrial wastes, to mention only the most salient examples, can no longer continue to be considered as falling within the prerogatives and the jurisdiction of a single country. The harm they cause to the environment, and therefore to life and property, does not stop at national borders.

50. This is particularly true of a number of practices that generate a global threat, such as the damage inflicted on the ozone layer by certain gases, or the massive escape of radioactivity into the atmosphere. Consequently, environmental criminality may well be an area in which the traditional and very narrowly interpreted concepts of sovereignty and of criminal responsibility may be in urgent need of re-examination and re-adjustment to the international realities created, at least in part, by the development and uncontrolled utilization of certain technologies. 29/ Thus, the World

Commission on Environment and Development states that "the traditional forms of national sovereignty are increasingly challenged by the realities of ecological and economic interdependence. Nowhere is this more true than in shared ecosystems and in those parts of the planet that fall outside national jurisdictions". 30/

51. The Convention on the Protection of the Environment, known as the Nordic Environmental Convention, concluded between the Nordic States at Stockholm on 19 February 1972, possesses, in terms of regional co-operation, a pioneering value in that it almost completely abolishes terms such as national borders and exclusive sovereignty. "It is, in this Convention, explicitly laid down that a State considering the permissibility of environmentally harmful activities must take into account what nuisance these activities may cause any other contracting State." 31/

52. International awareness of the problem is not new, as illustrated by the convening at Stockholm, in June 1972, of the Conference on the Human Environment by the United Nations. The Conference adopted a Declaration on the Human Environment, to which a set of 26 principles were attached, as well as a Plan of Action containing 109 recommendations related to the protection of the environment and the preservation of the ecosystem. 32/ Principle 21 explicitly declares that States have, "in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

53. Since then, international interest in the protection of the environment has not abated, as illustrated by the adoption of several specialized international instruments and the establishment of the International Environmental Information System (INFOTERRA). Recent examples are the adoption by the Governing Council of the United Nations Environmental Programme, by decisions 14/25 and 14/27 of 17 June 1987, of the Goals and Principles of Environmental Impact Assessment, which were developed by the Working Group of Experts on Environmental Law, and the London Guidelines for the Exchange of Information on Chemicals in International Trade, respectively. In addition, Governing Council decision 14/30 of 17 June 1987 approved the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes.

54. General Assembly resolution 42/186, annex, of 11 December 1987, containing the Environmental Perspective to the Year 2000 and Beyond, represents an additional effort to develop a sound framework to guide national action and international co-operation with respect to the preservation of a balanced and healthy environment. Further, General Assembly resolution 43/212 of 20 December 1988 stresses the obligation of all States to protect the environment and to take the legal steps and technical measures to halt and prevent the international traffic in, and dumping of, toxic products and wastes. Recently, the General Assembly adopted resolution 44/116, section R, of 15 December 1989 and resolutions 44/224, 44/226, 44/229 of 22 December 1989 on, respectively, the prohibition of the dumping of radioactive wastes; international co-operation in the monitoring, assessment and anticipation of environmental threats and assistance in cases of environmental emergency; traffic in and disposal, control and transboundary movements of toxic and dangerous products and wastes; and international co-operation in the field of the environment. It should also be mentioned that, by resolution 44/228 of 22 December 1989, the Assembly decided to convene a United Nations conference on environment and development, to coincide with World Environment Day on

5 June 1992. The General Conference of the International Labour Organization, at its seventy-seventh session at Geneva in 1990, adopted a resolution linking environmental protection with employment creation.

55. None the less, many recent incidents gravely affecting numerous countries have again highlighted the potential devastating international consequences of certain common practices and procedures. In addition, such events have illustrated the insufficiencies of the existing bilateral and multilateral arrangements for redress of and retribution for inflicted damages. The dumping of industrial wastes into the oceans, the appearance of acid rain, the massive escape of radioactive gases, the leakage of chemical products into transnational waterways, the huge oil spills occurring with frightening regularity, and other such phenomena which have resulted in the progressive destruction of entire forests, the radioactive contamination of crops and dairy products in vast areas, and the nearly total annihilation of animal life in major rivers and lakes and along sea shores document the international dimensions of pollution. 33/

E. Crimes against the cultural heritage

56. From an international perspective, the category of crimes against cultural heritage consists of the procurement and acquisition of archaeological and artistic objects that have been classified by the national authorities as part of the cultural heritage of a nation, for the purpose of exporting them to other countries, in violation of existing prohibitions. This transnational traffic, which threatens to deplete the cultural heritage of many nations, particularly in the third world, has caused deep concern in numerous countries. This concern led to the adoption, by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its sixteenth session, in 1970, of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 34/ This Convention, however, has found less than full acceptance among developed countries.* Since the most important markets for such objects are situated in these countries, their non-accession to the Convention gravely limits its impact on this illicit traffic.

57. The Fifth Congress examined offences involving works of art and other cultural property as a subtopic of agenda item 5, "Changes in the forms and dimensions of criminality - transnational and national", and concluded that: (a) there was a need for a better exchange of information concerning the protection of cultural objects at the international level; (b) such information should include particulars of national legislation designed to facilitate recovery of property that had been the object of illicit traffic and to deal effectively with those who engaged in theft or destruction of cultural property, by licensing requirements for auctioneers and dealers in antiques; (c) consideration should be given to the desirability of a code of ethics for professional dealers in art objects; and (d) new efforts should be made to obtain wider ratification, acceptance or adherence to the 1970 UNESCO Convention.

58. In an attempt to cope with the same problem, the Organization of American States approved resolution 210(V-0)/76 of 16 June 1976, containing the Convention on the Defense of the Archeological, Historical and Artistic Patrimony of

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*As of 21 June 1989, it has been ratified, accepted or acceded to by 66 States, of which only 3 are developed countries. See "Return or restitution of cultural property to the countries of origin" (A/44/485, appendix II).

the American Nations, known as the San Salvador Convention. Of particular interest in the present context is that this Convention, in article 14, specifically includes offences against the cultural patrimony in the extradition treaties in existence between States parties to the Convention.

59. Some experts believe that if the present rate of unauthorized digging of such sites continues unimpeded, the entire cultural heritage of numerous nations will have been disposed of by international traders within a few more decades. Valuable contributions to an understanding of the problem and to the search for solutions have been made by the United Nations Interregional Crime and Justice Research Institute (UNICRI), the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD; Spanish acronym) and by the Arab Security Studies and Training Centre.

60. The involvement of professionals, such as retailers and art and antique dealers, in this illegal trade has been established beyond doubt. Further, these operations cannot be easily carried out without the complicity of some officials at different levels. Moreover, many Governments are still ill-equipped to implement the necessary controls, both from a material as well as a juridical point of view.

61. In addition to the scarcity of resources, which often paralyses public officials by seriously hampering their surveillance activities both in situ and at the borders, the insufficiency of international instruments makes restitution extremely difficult and time-consuming. The non-ratification of the UNESCO Convention by some of the main importing countries underlines the difficulties in combating these offences at the international level.

62. Although it is true that the most destructive plundering of the cultural heritage of nations and the export of all movable items have been predominantly occurring in developing countries, such criminal activities are by no means restricted to the third world. Historical buildings, archaeological sites, temples, churches and even museums in developed countries have been, in recent years, the theatre of operations for highly sophisticated art thieves. The seriousness of the threat to the European cultural heritage has been reflected in the opening for signature of the European Convention on Offences relating to Cultural Property, by the Council of Europe, at Delphi, Greece, on 23 June 1985. As stated in the introduction to the explanatory report to the Convention "cultural property in museums, in churches, in private collections, on archaeological sites, has become, these last few years, the victim of unprecedented pillage, theft and destruction. An organized underground brings the loot to market, usually in a country other than the one from where it comes". 35/

II. ATTEMPTED SOLUTIONS

63. One of the major reasons for the serious difficulties encountered in the prevention and punishment of international offences appears to derive from their very nature, i.e. their transnational character. The large number of jurisdictions in the contemporary world and the diversity of existing national legislations pose particularly acute problems to the administration of justice in relation to crimes affecting, directly or indirectly, more than one sovereign State.

64. Extradition, which is, in theory at least, one of the main mechanisms for international co-operation in criminal matters, illustrates the shortcomings of current arrangements. Current extradition treaties are usually concluded

on a bilateral basis. Given the large number of sovereign States now in existence in the world, however, a bilateral approach may no longer be adequate to cope with the complexities of transnational criminality. Partly as a reflection of the fact that none of the principles of the traditional law of extradition has received sufficient universal recognition to have been declared a principle of general international law, no world-wide, general treaty of extradition has received the acceptance of the international community. Extradition laws remain essentially influenced by the concept of the sovereignty of States, and the granting of extradition is often considered more as an exception to national interest than a contribution to international solidarity. 36/

65. The territorial principle of jurisdiction, which is still the most widely applied, and even the nationality principle appear insufficient to solve jurisdictional problems that emerge in relation to the prosecution and punishment of transborder offences. The principle of limited jurisdiction over acts of non-nationals committed in a third country is already applied in cases of piracy. Global interest, however, has not yet been carried to the point of recognizing, either in customary law or in international agreements, the principle of universal jurisdiction for other international offences.

66. In recent decades, hijackers have been equated with pirates as enemies of the human race. The offence of hijacking has been called aerial piracy, albeit the purpose of the hijacking is often of a political nature, and thus does not fall within the traditional concept. The Hague Convention on the Suppression of Unlawful Seizure of Aircraft (1970), for instance, has increased the number of States competent to exercise jurisdiction over hijackers in a manner that includes the introduction of new bases for the exercise of jurisdiction.

67. Such extensions of jurisdiction are taking place in specific areas. Thus, the European Convention on Offences relating to Cultural Property, in article 13, paragraph 1, states that each Party "... Shall take the necessary measures in order to establish its competence to prosecute any offences relating to cultural property: (a) committed on its territory, including its internal and territorial waters, or in its airspace; (b) committed on board a ship or an aircraft registered in it; (c) committed outside its territory by one of its nationals; (d) committed outside its territory by a person having his/her habitual residence on its territory; (e) committed outside its territory when the cultural property against which that offence was directed belongs to the said Party or one of its nationals; (f) committed outside its territory when it was directed against cultural property originally found within its territory". Although this paragraph attempts to extend jurisdiction beyond what the territorial principle would traditionally allow, limits to this extension are set in paragraph 2 of the same article, which states that "... in the cases referred to in paragraph 1, sub-paragraphs (d) and (f), a party shall not be competent to intiate proceedings in respect of an offence relating to cultural property committed outside its territory unless the suspected person is on its territory". 37/ Unfortunately, the Convention has enjoyed very limited acceptance by the States of the region.

68. The new United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted at Vienna in December 1988, states n paragraph 1 (b) of its article 4 that each Party:

> "(b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:

(i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;

(ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

(iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph (c) (iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1" (E/CONF.82/15).

69. As is the case with extradition, the majority of judicial assistance arrangements are of a bilateral nature. Moreover, they have not been concluded in large enough numbers to constitute a tight, world-wide net, and thus have not yet attained an adequate level of effectiveness. The formulation and adoption of multilateral agreements have been hampered by the need to take into consideration the different national legislations and legal traditions concerning such vital issues as, inter alia, the constitutional protection of the rights of the accused. In this connection, a valuable step towards solving such problems and thus establishing a satisfactory multilateral framework for judicial assistance is represented by the Commonwealth Scheme for Mutual Assistance in Criminal Matters, adopted by the Commonwealth Law Ministers at their meeting at Harare, Zimbabwe, from 28 July to 1 August 1986. The Commonwealth Scheme is based on a simple premise, namely, that Commonwealth Governments will, in certain respects, extend to other Commonwealth Governments the facilities that, within their own legal frameworks, are available to their own agencies. This instrument, however, goes beyond the common conception of judicial assistance in that it contains provisions relating to the international forfeiture of the proceeds of crime.

70. More recently, the International Conference on Drug Abuse and Illicit Trafficking, held at Vienna, Austria, from 17 to 26 June 1987, recommended that States initiate action to enter into regional or interregional agreements that would serve the purposes of formalizing mutual legal assistance in such activities as (a) taking evidence, including compelling testimony; (b) serving judicial documents; (c) executing requests for searches and seizures; (d) examining objects, sites and conveyances; (e) locating or identifying witnesses or suspects; (f) verifying in narcotics laboratories the illegal nature of substances seized; (g) exchanging information and objects; and (h) providing relevant documents and records, including bank, financial, corporate and business records. 38/

71. The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances states, in paragraph 1 of article 7, that "... the Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1". Paragraph 2 further states that "... mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: (a) Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and

seizures; (d) Examining objects and sites; (e) Providing information and evidentiary items; (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records; (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes" (E/CONF.82/15).

72. In the matter of forfeiture of the proceeds of crime, the International Conference pointed out that the volume of the property and money transactions related to drug trafficking had increased so greatly as to affect some national economies in their entirety, and that the increased use by traffickers and their associates of complex corporate structures and intricate business transactions involving banks, trust companies, firms dealing in real estate and other financial institutions had added to the difficulty of seizing assets obtained as a result of trafficking in drugs. 39/ Consequently, the International Conference recommended that national legislation and regulations be reviewed for the purpose of proposing any necessary modifications that would facilitate and ensure the seizure, freezing and forfeiture of the proceeds from drug trafficking. In the same vein, it suggested that, if some of these assets were located in another State, the latter should assist the other State in seizing those assets. 40/ In this connection, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances contains, under its article 5 (Confiscation), a series of dispositions that will be of great value for the control of this aspect of international criminality and which could serve as a model for future initiatives (E/CONF.82/15).

73. The transfer of criminal proceedings is a promising development in international co-operation. Thus, the International Conference on Drug Abuse and Illicit Trafficking suggested that States whose systems of law and rules of evidence and procedure are much alike may wish to consider entering into agreements for the transfer of criminal proceedings as appropriate. Further, the International Expert Meeting on United Nations and Law Enforcement, held at Baden near Vienna, Austria, from 16 to 19 November 1987, suggested the transfer of proceedings as a contribution "to the solution of the problems of concurrent jurisdiction and plurality of proceedings", which "might lead to the reciprocal formal acknowledgement of the validity of foreign criminal judgements".

74. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in article 8, states that the Parties "... shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice" (E/CONF.82/15).

75. Another obstacle to effective international co-operation is related to the complexity of many domestic administrative arrangements. Thus, in most countries, a number of agencies within the Government, in addition to the police forces and prosecuting authorities, may be more or less directly involved in some aspects of the detection, prevention and control of certain types of crime. This may be the consequence of the role of those agencies in the supervision of banking and financial operations, foreign trade and customs, quality control and tax matters. This functional fragmentation, which may be sound and justifiable with respect to domestic matters, almost unavoidably results in a diminished capacity to initiate requests for international co-operation, as well as in slow responsiveness vis-à-vis incoming requests.

76. In a number of cases, some of the harmful acts mentioned in the previous paragraphs, such as damage to the environment or the removal and sale of

archaeological objects, may have been classified as crimes in some national legislations but not in others. This absence of universal or nearly universal criteria for criminalization is a grave impediment to the establishment of effective international co-operation agreements. This is most clearly the case with respect to the likelihood of extradition, in so far as extradition is, in general, subject to the principle of double criminality, i.e. that the act for the prosecution of which extradition is requested should be a crime in the legislations of both the requesting and the requested country. If that condition is not fulfilled, extradition cannot be granted.

77. A development that has favoured the commission of transnational economic and commercial crimes has been the enactment by a number of countries of banking legislation that establishes, for all practical purposes, a duality of banking systems, consisting, grosso modo, of an internal system that contains the normal safeguards and controls required for the sound and responsible operation of banking institutions, and an external system of a much more accommodating nature, aimed at attracting foreign capital. Unfortunately, the lax requirements for bank incorporation and the loose supervision exerted by some Governments with respect to the external system have often attracted customers interested in laundering the proceeds of crime.

78. Off-shore banking legislation often possesses an additional characteristic that constitutes a serious and sometimes even insurmountable obstacle to international co-operation. This is the manner in which this legislation seeks to be a protective screen for all types of banking activity, instead of being a mechanism that tries to ensure that matters of a genuine confidential nature are not disclosed to competitors, the public or law enforcement agencies (except under specific conditions).

79. Further, it is obvious that widespread corruption of public officials seriously limits the possibility of implementing even the best international co-operative arangements. There have been cases in which some persons in key positions within the public administration structures of a country or within political parties have often succeeded in hindering or sabotaging efforts to comply with requests for assistance in criminal matters.

80. Corruption is a form of criminality that often accompanies the operations of international crime. Action against corruption may take either the form of specific recommendations for changes in the relevant legislation of those countries that deem it necessary, or the elaboration of guidelines for the control of such undesirable conduct, including the viability of bringing corruption under an expanded conception of jurisdiction.

III. WAYS AND MEANS OF STRENGTHENING INTERNATIONAL CO-OPERATION FOR THE PREVENTION OF TRANSBOUNDARY CRIMINALITY

81. The Congress may wish to consider the following suggestions and decide which ones should be elaborated for possible submission to the appropriate international forums.

82. It appears that a modernized and more flexible conception of jurisdiction is a prerequisite for the effective prosecution of transnational offenders. In addition, this new conception needs to be combined with simpler and more reliable methods of extradition. In this connection, several possible lines of action are possible, inter alia, international action on extradition, international action on jurisdiction, international law enforcement co-operation, mutual judicial assistance and technical co-operation.

A. Jurisdiction

83. It seems that any convention or conventions designed to deal with the transnational dimensions of criminality would, inevitably, have to expand the jurisdictional capabilities of affected States. Such a convention could contain a list of acts to be considered crimes in all States becoming party to it, in which case a considerable degree of international uniformity would be achieved. Consideration might be given to linking extradition obligations to any expanded jurisdictional capabilities, so that States should either prosecute offenders in its custody or extradite them to a requesting State (aut dedere aut judicare).

84. The concept of universal jurisdiction may possibly be applied to at least the most serious forms of transnational criminality, i.e. the same jurisdiction principle traditionally applied to piracy, thus providing universal jurisdiction by all States against the perpetrators of such offences. 41/

85. Recent developments have moved in the direction of expanded jurisdiction. Thus, useful precedents can be found in existing conventions designed to cover specific types of acts as, for example, on aerial hijacking in The Hague Convention; on the sabotage of aircraft in the Montreal Convention; and on offences against diplomats in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The Eighth Congress may wish to examine the desirability of undertaking an attempt to formulate general principles to be extended to other transnational crimes on the basis of these examples and of suggesting modalities for granting jurisdiction over such crimes to an international criminal court or to regional courts.

B. Mutual judicial assistance

86. Mutual assistance treaties are, in the opinion of some experts, the most significant development in international law in recent years. They are formulated to overcome all the traditional difficulties encountered in obtaining evidence in a foreign country, and limited only by the provisions of the requested country's national law. Such treaties characteristically commit the full authority of the requested country in any future case in securing, by compulsory process or otherwise, all the necessary evidence required for the investigation and trial of any offence falling within the spectrum of a broad range of commonly recognized criminal acts. These treaties have been extremely useful in overcoming some previously insoluble problems, such as those created by the elaborate secrecy measures surrounding banking transactions in many countries.

87. Formal investigative assistance becomes indispensable for the acquisition of evidence needed to continue the investigation or to prepare the case for trial. Such formal investigative assistance is assured either through executive agreements or mutual assistance treaties. Both are recent international innovations.

88. In the future, more comprehensive mutual assistance instruments, either of a bilateral or multilateral nature, could include additional aspects, such as recognition and assistance in the enforcement of penal judgements, transfer of sentenced persons and transfer of criminal proceedings, as well as dispositions for the freezing, seizure and forfeiture of criminal proceeds. The latter is already included in some international instruments. There exists also the possibility of establishing more solid foundations for international judicial assistance. Traditionally, co-operation between investigative

agencies of various countries has been carried out on an informal basis. The corresponding requests for investigative co-operation may seek the performance of a variety of investigative functions, as long as they do not involve compulsory legal process. The limitations of this approach are obvious. In spite of such limitations, however, informal co-operation should continue to be used, encouraged and facilitated.

89. Since it often appears that the efficiency of measures for combating transnational criminality adopted at the national level is closely dependent on the co-operation of the criminal authorities of other States, a possible solution might be the conclusion of an international convention on mutual assistance in criminal matters, which might include enforcement of sentences rendered in other countries. In this respect, the European Convention on Mutual Assistance in Criminal Matters is an interesting attempt to propose solutions in matters relating to international criminality. In particular, the Convention accepts the basic principle that mutual assistance is to be independent of extradition in that it is to be granted even in cases where extradition is refused.

90. In view of these developments, the Congress may wish to consider the opportunity of formulating a draft international convention on mutual judicial assistance, and instruct the Secretariat accordingly.

C. Extradition

91. Multilateral extradition conventions have been concluded on subregional, regional or other limited bases, as illustrated by the Benelux Extradition Convention, the European Convention on Extradition, the Inter-American Convention on Extradition, the Arab League Extradition Agreement and the Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth. These arrangements are sometimes based on geographical, sometimes on political or cultural affinities or, as is the case with the Scheme, on historical links between a group of diverse countries. Their successful conclusion indicates that perhaps the time has come to initiate the elaboration of a universal instrument for extradition.

92. Foremost among the difficulties besetting extradition arrangements is the political offence exception clause, a problem that emerges particularly in connection with the surrender of alleged or convicted terrorists. Some modest progress has been achieved in recent decades, as illustrated by The Hague Convention for the Suppression of Unlawful Seizure of Aircraft. 23/ This Convention not only declares the offence of hijacking to be extraditable (article 8), but also commits its States parties to treating hijacking as an ordinary offence of a serious nature, regardless of the motivation of the hijacker. Article 8 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 24/ is almost identical to article 8 of The Hague Convention, and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons contains a similar provision.

D. Law enforcement co-operation

93. Many experts are convinced of the indispensability of some effective form of international policing, particularly in view of the total disregard transnational offenders manifest vis-à-vis borders and territories, while simultaneously taking full advantage of the limitations that such borders and territories impose on national police operations.

94. The General Assembly of Interpol at its fifty-fourth session, held in Washington, D.C., from 1 to 8 October 1985, in reaction to the resolution on criminal acts of a terrorist character approved by the Seventh Congress, adopted resolution AGN/54/1, by which the General Secretariat of Interpol was requested to prepare an instruction manual outlining the practical possibilities that existed for co-operation in dealing with terrorist cases. A year later, the General Assembly of Interpol, at its fifty-fifth session held at Belgrade, Yugoslavia, from 6 to 13 October 1986, adopted by resolution AGN/55/3, the "Guide for combating international terrorism", containing useful information on the use of the Interpol network in the struggle against transnational terrorism.

E. Differentiated strategy

95. Although there has been a trend in recent decades in some sectors of crime prevention and criminal justice towards decriminalization and depenalization, it appears that, at least in certain areas, the opposite course may be required, as is the case with the illicit traffic in cultural property.

96. The Eighth Congress may wish to examine the possibility of adopting recommendations for stricter criminalization of transnational offences at the national level for Governments to draw upon if interested. This may be necessary in view of the leniency of much legislation, a characteristic that makes it lose some of its dissuasive power. For instance, if fines for certain offences are low in comparison with the profits made, the prohibition will continue to be ignored. This appears to be the case for numerous economic offences, the pillaging of cultural patrimonies and environmental offences. In some such cases, imprisonment may have to be added to the fines if prevention is to be achieved.

97. The Eighth Congress may consider it appropriate to examine ways and means of establishing clear international responsibility for damage to the environment, including financial responsibility, for rapidly informing neighbours of possible danger and for ceasing and desisting from undertakings that are harmful to the environment and whose impact is likely to affect other countries. In this regard, it may be opportune to elaborate some of the provisions contained in the Guiding Principles of Crime Prevention and Criminal Justice approved by the Seventh Congress.

F. Technical co-operation

98. One of the main causes of failure in preventing and controlling transnational criminality is the frequent inadequacy of personnel and equipment in developing countries. Since most of these countries suffer from acute shortage of resources, they cannot be expected to remove those deficiencies by themselves. Substantial improvement of technical co-operation is therefore an indispensable condition of international concerted action against transborder criminality. The Congress may wish to explore ways and means of motivating developed countries to increase their current levels of technical co-operation in this vital area, either bilaterally or through the United Nations or other intergovernmental organizations.

99. The capacity of the police, other law enforcement agencies, the judicial organs and other parts of the criminal justice system to deal with transnational offences, such as drug trafficking and related forms of organized and economic crime, including corruption, must be improved. For this purpose, emphasis should be placed on the training of personnel and the deployment of computer technology. Thus, training, especially training trainers so as to

achieve a multiplier effect, should be a central element of technical co-operation programmes. Equally important should be assisting developing countries to attain an acceptable level of computerization of their crime control programmes, thus permitting them to profit from and contribute to the United Nations Crime and Justice Information Network and other such international information processing systems, including Interpol.

100. Technical co-operation could also take the form of assistance in the drafting of codes and other national legal instruments, to be provided to the requesting countries either bilaterally or through the United Nations. This activity should be guided by the avowed intent of creating the modicum of harmony and compatibility of legislation throughout the world that would most likely facilitate multilateral co-operation in the future. The regional and interregional crime prevention institutes could play a significant role in this endeavour.

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CRIME PREVENTION AND CRIMINAL JUSTICE IN THE CONTEXT OF DEVELOPMENT: REALITIES AND PERSPECTIVES OF INTERNATIONAL CO-OPERATION

Practical measures against corruption

Manual prepared by the Secretariat

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INTRODUCTION

1. The Economic and Social Council, on the recommendation of the Committee on Crime Prevention and Control, by resolution 1990/23 transmitted to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders a draft resolution on international co-operation for crime prevention and criminal justice in the context of development, to which were annexed a series of recommendations on the subject. Recommendation 8 read as follows:

> "Because the corrupt activities of public officials can destroy the potential effectiveness of all types of governmental programmes, hinder development, and victimize individuals and groups, it is of crucial importance that all nations should: (a) review the adequacy of their criminal laws, including procedural legislation, in order to respond to all forms of corruption and related actions designed to assist or to facilitate corrupt activities, and should have recourse to sanctions that will ensure an adequate deterrence; (b) devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power; (c) adopt procedures for the detection, investigation and conviction of corrupt officials; (d) create legal provisions for the forfeiture of funds and property from corrupt practices; and (e) adopt economic sanctions against enterprises involved in corruption. The Crime Prevention and Criminal Justice Branch should co-ordinate the elaboration of materials to assist countries in these efforts, including the development of a manual to combat corruption, and should provide specialized training to judges and prosecutors that would qualify them to deal with the technical aspects of corruption, as well as with the experience derived from specialized tribunals handling such matters." 1/

2. The Crime Prevention and Criminal Justice Branch has accordingly arranged for the preparation of the present manual, the format of which parallels that of the recommendation. Its purpose is to review the most common problems encountered by policy-makers and practitioners in their efforts to deal with corruption. It includes possible measures that could be taken and procedures for devising anti-corruption programmes. In suggesting possible courses of action, the manual touches on legal issues whose degree of relevance and difficulty may vary depending on the legal system of each country. As far as possible, such issues have been taken into account, in order to facilitate the adaptability of the manual to as many contexts as possible.

3. The manual could not have been drawn up without the invaluable support of the United States Department of Justice and in particular Mr. Michael A. DeFeo, Deputy Chief, Organized Crime and Racketeering Section. A first draft was presented at the Interregional Seminar on Corruption in Government, held at The Hague from 11 to 15 December 1989. The participants fully endorsed both its approach and content. Their comments were taken into account and reflected in the text of a revised version presented to the Committee on Crime Prevention and Control at its eleventh session, where it was welcomed as a valuable step in the right direction. The text has been further streamlined, taking into account all the different comments received from Governments and experts involved in its drafting.

I. PENAL LAWS

4. A requisite of any campaign to combat corruption effectively is an adequate body of law prohibiting those forms of official misconduct most harmful to honest government and to the citizenry. Common experience identifies a number of crimes customarily subject to near-universal denunciation, as illustrated in the following sections.

A. Theft offences

5. Theft, conversion, and other forms of appropriating State property for private use are dealt with in most penal codes. The drafting challenge is to define the prohibition broadly enough to include every dishonest method of diverting public resources that criminal ingenuity can devise. Not merely physical theft should be punished but also unauthorized use of the time and labour of public employees and of government facilities and equipment, such as computers.

B. Abuses of position

6. Abuses of position to secure unjust advantage may include any planned, attempted, requested or successful transfer of a benefit as a result of unjust exploitation of official status. Little benefit is gained by undue focus on whether the initiative for the prohibited transfer or gratuity originates with the person seeking official action (bribery) or with the official (extortion). Indeed, the more widespread and institutionalized corruption becomes, the more impossible and irrelevant it is to determine which party took the first step in the customary exchange of favours to encourage or discourage the performance of a public duty. Consideration should therefore be given to criminalizing any diversion of public resources in violation of established norms, even without personal benefit to the official responsible. This would meet the situation in which an office holder violates administrative procedures to reward fellow members of the clan, tribe, or political party without regard to merit. Unjust enrichment of an official should also be subject to sanction, even though there may be no direct loss to the State or an individual. The reason for this is that the State's integrity and its citizens' confidence in government are damaged by any unjust advantage taken by an official for his or her own profit. The knowledge, or even an indication, of such practices breeds the suspicion that any public project or contract may exist primarily to enrich public officials.

C. Conflict of interest

7. Conflicts between official duty and private self-interest should be properly dealt with, although defining what conflicts should be made criminal is very culture-bound. Every society would expect a legislator to advance the interests of his particular constituency. It is only at the point that an official's self-interest is so strong or expressed in a way so indicative of a wrongful purpose, in a manner to be presumed to threaten the public good, that criminalization should be considered. If the legislator supports a project that benefits only his private economic interest, or when the legislator's opportunity to profit from legislation is concealed by hidden ownership through a nominee, then society should consider whether penal sanctions are appropriate.

8. Conflicts that threaten the public good are also common for officials who find themselves in a necessarily co-operative, even symbiotic relationship with the private sector. An authority setting the rates for public utilities,

approving the sale of pharmaceuticals, or negotiating contracts between a State agency and private entrepreneurs will strive for an arms-length but not hostile relationship with the persons with whom business must be done. The danger always exists that the official may form personal relationships jeopardizing the welfare of the citizens, which should be paramount. That danger becomes acute when the regulated industry being dealt with has a natural monopoly of employment or business opportunities in the government official's professional speciality. These are unavoidable occasions for temptation, creating conflict of interests between the obligations of the often underpaid public servant and the attraction of highly lucrative private business opportunities, which become available only if the government regulator finds favour with the industry. When the citizenry's well-being is subordinated to such favour-seeking, penal sanctions would seem to be appropriate.

9. The criterion for criminalization of conflicts of interest cannot be whether the public interest is served by a particular decision, or whether there is a loss of public financial advantage, because there are almost always multiple financial and non-financial public interests affected by a single decision, and only a few of them are objectively and immediately measurable. Rather, the criterion is better defined as the purity or transparency of the decision process, that is to say, a public official should either not be allowed to act in any matter affecting his or her financial or personal interest, broadly defined to include whatever circle of kinsmen and acquaintances seem necessary in the context of that society, or not be allowed to act without making certain specified disclosures, while an independent decision-maker would rule upon the appropriateness of the official's continued participation.

D. Disclosure statutes

10. It is not realistic to expect that any law requiring the reporting of illegal acts by public officials will result in voluntary confessions. Nevertheless, laws or regulations requiring comprehensive disclosure (all of a person's financial assets, obligations and relationships upon entering a government position), a periodic summary (all income or business activity on a yearly basis), or disclosure of a reportable event (receipt of outside income, sale or purchase of any asset exceeding a certain value) can be invaluable anti-corruption tools. Their value is two-fold. They function as an early-warning device, an indicator that a person whose financial picture and life-style are inconsistent with the salary of a public official should be required to explain the situation, or should be watched carefully. A second useful function is as a separate vehicle of prosecution, when the underlying corruption that generated the illegal income or assets may not be provable. Each country could impose disclosure requirements appropriate to the practices of beneficial ownership and societal group interests that are of concern to that society.

E. Sanctions against failure to report

11. To be effective, sanctions against non-disclosure or false reporting must be approximately as severe as those against the underlying corruption. Purely civil sanctions, or those that treat reporting violations as infractions or minor offences, are frequently ineffectual because they can be exploited as the lesser of two evils. An official who has enriched himself unjustly will be motivated to conceal the criminal proceeds in any reporting document because the consequences of non-disclosure would be significantly less painful than those of disclosure, involving discovery of the illegal payment and the

resulting greater criminal sanction for that offence. Lesser penalties for failure to report allow a similar option. A failure to report, however, will be noticed fairly promptly if the disclosure is required to be periodic, instead of being triggered by an event that is known only to the corrupt participants.

F. Political contributions

12. A further refinement of disclosure statutes relates to the support of political activities. The expenditure of huge sums of money to influence elections by very calculating enterprises, including multinational corporations and special interest groups, cannot all be motivated by ideology or the charisma of a candidate. It is a reality of life that significant financial or personal advantages are expected by major political contributors. Most legal systems leave space to accommodate this reality in personnel appointments at policy-making levels and in other discretionary areas consistent with that society's traditions. All, however, have limits beyond which the distribution of government benefits and advantages should be legally required to be impartial or governed by objective standards designed to secure a decision on the merits of the case. When political favouritism becomes so pervasive as to threaten professionalism in the operation of government programmes, mechanisms must be found to limit its influence. Laws covering non-partisan bases for government action as a means of encouraging integrity and professionalism in government are discussed in chapter II. Disclosure laws governing political financing can be useful for compelling candidates or political parties to disclose any contributions they have received, thereby permitting the voting public and the news media to react to those contributions not only when they are made before an election but also afterwards, when the contributors receive unwarranted consideration.

G. Organizational structures

13. Legislation may be required to organize the structures that put anti-corruption measures into effect. In reply to the question whether a specialized anti-corruption unit is necessary or whether the function can be handled within existing organizations, it may be said that for police, prosecutors and investigating magistrates alike, there are both advantages and disadvantages to separate units. Among the disadvantages are rivalries and barriers to communication between a new authority and existing organizations, greater administrative costs, and diminution in the prestige and morale of the general organization. It is also necessary to follow some workable principle with respect to the creation of new entities and to ask, for example, whether an investigative unit is necessary not only for corruption offences but also for drugs, theft of cultural patrimony, environmental crimes or whatever other phenomenon may receive political and public attention at any particular moment. Among the advantages of a separate unit are specialization, greater security and accountability. The latter may well be the greatest virtue, as it allows the political authority to measure what success is being achieved with given resources and assigns anti-corruption responsibility to identifiable persons. This ability to measure results is important because of corruption's nature as a covert activity, which may never be detected without aggressive law-enforcement efforts.

14. Sometimes, radical structural changes may be legislatively imposed as a result of scandals that have created a perception of corrupt activity and concealment by the very same authorities charged with exposure and suppression of such wrongdoing. Once public opinion becomes outraged, the only means of satisfying it may be the creation of entities considered to be impervious to the corrupting influences that gave rise to the scandal, and independent of

the traditional authorities believed to have been corrupted. A police scandal in Hong Kong in the 1970s led to an erosion of public confidence, as a result of which a new entity was created, the Independent Commission against Corruption. This Commission is an example of a single-purpose anti-corruption entity independent of any other authority save judicial review and necessary budgetary support. An independent counsel mechanism has existed in the United States of America since shortly after the Watergate scandal. In any case involving certain legislatively enumerated positions of the executive branch and of the presidential election campaign, it is required that the Attorney General notify a special court, which then appoints a special prosecutor to investigate the matter and to prosecute if necessary. This independent counsel must be chosen from outside the Government and operates without supervision by the Attorney General, but may call upon an unlimited budget and any desired resources of the Government, including the investigative agencies normally under the Attorney General's control.

15. These entities are rather rare creatures, anti-corruption elements created to be independent of the existing power structure and enjoying operational autonomy, even to the extent of self-determining a budget. They do entail substantial costs, both financially and in loss of prestige by existing law-enforcement units, and can be controversial. Such extreme measures may be necessary to preserve public confidence that even the highest levels of government can be held accountable. Whether or not a society needs an independent authority capable of action against its leading political authorities, outside of regular channels, seems to be a question answerable only within the context of that Government's level of, and vulnerability to, corruption, degree of law-enforcement professionalism, independence and impartiality of the judiciary and responsiveness to public opinion.

H. Exclusivity of anti-corruption jurisdiction

16. Regardless of whether anti-corruption responsibility is assigned to an independent agency or remains with a branch or division of an existing structure, exclusivity of jurisdiction needs to be considered. When a certain sum is dedicated exclusively to corruption matters, it is tempting, as a matter of managerial clarity, to give the entity that operates those assets a monopoly over all corruption investigations. In addition, endemic delays in the administration of justice due to overloaded dockets of Courts argue in favour of exclusive anti-corruption jurisdiction, even at the judicial level. The demonstrated susceptibility of human nature to the corrupting influence of power and to the temptations and wrongful opportunities that come with authority argues, however, against the orderly logic of exclusive competence. The Latin maxim of quis custodiet ipsos custodes? is a reminder that one must question who will guard the guards themselves. A little redundancy and even competition can be a healthy antidote to corruption, because no single person or entity has the power to license illegal activities. An obligation of other entities to report all corruption investigations to the primary anti-corruption authority seems appropriate, the only real question being the timing of such obligation. The legislative and managerial challenge in this area is to allow just enough redundancy, and even rivalry, to expose corruption if the primary anti-corruption authority fails to do so, but not to permit so much duplication that the flow of intelligence, or of investigative and prosecutive opportunities, available to the primary authority is disproportionately reduced.

II. ADMINISTRATIVE AND REGULATORY MECHANISMS FOR THE PREVENTION OF CORRUPT PRACTICES AND THE ABUSE OF POWER

A. Limits of penal action

17. The deterrent effects of investigation and prosecution and the direct incapacitation of wrongdoers by their removal from office and incarceration can reduce corruption in government. Yet virtually all practitioners involved in anti-corruption efforts would concede that, no matter how draconian or rigorously enforced the penal measures may be, no society can realistically punish more than a small proportion of the officials who abuse their positions. If the level of integrity in government is to be improved, it will be by managerial, administrative, regulatory and reporting mechanisms. No matter how frequently imposed or how personally gratifying they are to anti-corruption authorities, penal sanctions can help to achieve honesty in government only in a well-administered and well-motivated organization. This has been recognized in the configuration of one of the best organized anti-corruption entities, the Hong Kong Independent Commission against Corruption. The Commission has three departments with separate functions. The Operations Department does criminal investigative work, the Corruption Prevention Department attempts to eliminate vulnerability to corruption in systems or procedures, and the Community Relations Department educates the public about the evils of corruption.

B. Information on corruption

18. One function that may be thought of as being on the borderline between a criminal investigative authority and a non-penally-oriented audit group is the encouragement and channelling of a flow of information so that the inherent secrecy of corruption offences can be overcome. Means attuned to their intended audiences must be developed to encourage the reporting of corruption by the public in general, particularly by its most frightened and victimized members, and by agency work-forces, among whom there is likely to be considerable awareness or informed suspicion of any wrongdoing within their sphere of experience and observation. Supervisors in the chain of command, and auditors charged with an advisory and evaluatory function, should identify and report specific misconduct, as would be the duty of any public employee, but their responsibilities should also include helping to correct situations that invite, or are characterized by, dishonesty. Most citizens may be exposed to low-level corruption, for example "speed money" to expedite action, a gratuity to overlook an infraction, a conspicuous display of wealth by a low-salaried official. This type of corruption is not as dangerous as institutionalized kickbacks on public contracts. Nevertheless, although individual citizens may be exposed only to amateurish forms of dishonesty, highly visible and effectively functioning mechanisms must exist to encourage and communicate reports of corruption from ordinary citizens to administrative or investigative authorities with sufficient independence and motivation to initiate corrective action or impose accountability for management failures. The true significance of encouraging and processing citizen complaints, and of widely publicizing any corrective action taken as a result, is not the inherent importance of the dishonesty exposed and corrected but the central issue of public confidence in government and its integrity. As a consequence, the same standards of efficiency, productivity and cost-benefit ratios should not be applicable to telephone registers or other means set up to receive public complaints of official misconduct and corruption. The availability of such mechanisms is an

end in itself, and they should be maintained if used, even if the rate of return may be less than from other anti-corruption measures.*

C. Other sources

19. Particular attention needs to be paid to persons who know about cases of official abuse or misconduct but are reluctant to submit a complaint that would reveal their identity. Because of its susceptibility to abuse, being sometimes used as an almost routine weapon against personal, bureaucratic or political adversaries, the anonymous complaint can never form the basis for administrative or personnel action and should only be considered as investigative intelligence of unknown reliability, unless investigation produces evidence that has its own probative value independent of the anonymous allegation. Dubious reliability and vulnerability to abuse might seem to suggest the desirability of a policy that would assign no significance to an allegation unless the complainant was willing to bear responsibility for the truth or falsity of the allegation. Nevertheless, while there may be societies in which no citizen need fear retaliation for exposing misconduct, and where the sources of intelligence on corruption are so plentiful that revelations from anonymous sources can be ignored, for most people, dwelling in less fortunate circumstances, anonymous complaints may still have a value.

D. Witnesses

20. Different considerations prevail when the goal is to bring forward persons who will actually bear witness and provide evidence upon which administrative and penal action can be taken. Because potential witnesses have to be identified, fear of reprisal is likely to be a serious deterrent if they do not perceive that the allegation is pursued with the full weight of governmental authority. There are two drawbacks to channelling complaints to the operational programme. First, responsibility for deciding which allegations are to be pursued further is given to those who are managerially, if not personally, responsible for the wrongdoing of subordinates; such persons have a natural incentive to minimize wrongdoing rather than to seek its exposure. Secondly, nothing is done to alleviate public concern or frustration about corruption, as the complainant has no separate entity with which to identify and is left at the mercy of the organization that perpetrated the alleged injustice. This argues in favour of excluding programme authorities from the control of corruption complaints in favour of agencies with at least as much independence as an internal auditor, if not more (for example, an administratively created internal auditor, a statutorily created internal auditor with legislative or public reporting powers, a government-wide auditor, an ombudsman, an independent corruption authority with law-enforcement powers or an investigating magistrate).

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*The Civil Service Commission of the Philippines launched in 1988 a programme called "Do Away with Red Tape" (DART) in an effort to put public pressure on the bureaucracy to streamline procedures and improve services. Action centres were established in all Civil Service Commission offices throughout the country that received complaints by the public through the post and telephone or in person. Complaints were verified and, if found true, the office or official responsible was exposed in news releases to the press or in a weekly DART radio broadcast. The DART programme proved very effective and is still in operation.

E. Rewards

21. Strong stimuli may be necessary to provoke the disclosure of corruption, because so many people believe that a corrupt system can be used to their own advantage. Probably the most historically reliable means of eliciting information is the offer of a reward, payable after confirmation of the accuracy and utility of the intelligence furnished. Such payments are often considered as solely criminal justice mechanisms, but customs and revenue services have used rewards for centuries to aid in revenue collection. Anti-corruption authorities can also make good use of rewards, subject to proper precautions, as a powerful incentive for co-operation by both anonymous informers and witnesses. This reference to payments of rewards to persons who wish to remain anonymous may seem internally contradictory. One means of accomplishing this seemingly impossible task has been developed by some police authorities and citizen's anti-crime associations. Often given neutral names ("Fight Crime Direct Line", or "Secret Witness", for example), to lessen the social stigma attached to the anonymous informant, the programmes are easily implemented at little cost. One or more discreet officers, preferably with sufficient law-enforcement experience to instil confidence in the persons with whom they deal, a secure office, telephone system and post-office box are normally sufficient, together with a means of publicizing the campaign. For corruption offences, it would seem easy to target the intended audience through television advertisements or the posting of notices in or near government offices. At a minimum, such notices need only use some attention-getting graphic device to capture interest, supply the reader with a telephone number or mailing address where information on corruption will be received, and explain that information found to result in criminal convictions or financial recoveries will be compensated while confidentiality will be maintained.

22. When a caller or correspondent inquires how this is done, the simple procedure can be explained. A code symbol or number is assigned to the caller and the information is furnished in writing or by telephone. If by telephone, the experienced desk officer will reduce it to an intelligible allegation and then forward it to the appropriate investigative or audit authority. To express a sense of priority and urgency, such call-in systems are often called "hot lines", whether or not they involve the concepts of reward or anonymity. When an arrest or seizure is made on the basis of the information, the promised sum will be paid in cash or other discreet fashion, subject of course to stringent integrity safeguards to prevent any suspicion of embezzlement within the programme. Because of the hope of reward, the source of information has a continuing interest in the success of the inquiry. This incentive for continued contact makes it possible to explore the original information and request additional detail and observations. Both from original and follow-up contacts, an originally anonymous source may be willing to meet investigators on a confidential basis, and even, ultimately, to become a publicly identified witness, once confidence is developed and fears of reprisal are overcome. Indeed, the requirement that intelligence on corruption should not only be accurate but should also lead to convictions or tangible recoveries in order to merit a reward may motivate the originally anonymous source to become a public witness if that is the only way sufficient evidence can be made available to justify a reward.

F. Screening allegations

23. An agency with its roots in law enforcement, if chosen as the recipient of a stream of complaints that contain accusatory words such as "corrupt" or "crooked" but in substance allege inefficiency, will pay little attention to

them. Such complaints are far more likely to interest persons performing an auditory function. They have an interest in inefficiency, waste and incompetence, as well as in criminal wrongdoing, because their task is to measure performance effectiveness and the maintenance of certain standards in an agency's programme.

G. Auditing authorities

24. Auditing functions may have various configurations. One government-wide office may exist to monitor the effectiveness and efficiency of governmental programmes, and it may have an executive, legislative or conceivably judicial function. It could theoretically have direct operational responsibility for management audit and integrity inspections of every government activity. Perhaps more frequently, an office of government-wide competence will function primarily in a policy-making and supervisory role, as does the Secretaría de la Contraloría General de la Federación, in Mexico. Then separate audit or inspection staffs may exist in each government agency (as do the "contralorías internas" in the Mexican Government). Sometimes the power to make legislative or public reports is vested in government auditors and occasionally they have statutory guarantees of operational authority, budgetary independence or other incentives to objectivity.

25. In addition to serving as a logical contact and screening point for both anonymous and attributed citizen complaints, an internal auditor can perform other valuable functions by stimulating and making use of the flow of information that is essential to identifying and combating dishonesty in government. An audit staff works throughout an agency and should enjoy a reputation for objectivity, because its organizational loyalty is normally owed only to the chief executive. With mobility and prestige, an audit staff is an obvious point of contact for the reporting of wrongdoing by government employees. To preserve employee confidence, a tradition of discretion may need to be established, but that should always be the standard in corruption inquiries. Audit staffs are also more likely to be technically knowledgeable than are members of a general law-enforcement authority. This means that auditors can perform necessary functions not only by screening complaints but also by interpreting them for less technically sophisticated criminal justice authorities, both at the time of initial referral and as a continuous resource throughout an inquiry requiring specialized knowledge.

26. The identification of areas of excessive cost and of inferior management controls also serves to detect and deter corruption in ways in which a criminal justice anti-corruption authority cannot. Penal jurisdiction is normally triggered only by a complaint or observation of conduct, which, if proved true, would constitute a crime. A criminal justice agency, even if it legally had discretion to do so, could ill afford to devote its resources to examining bid approval procedures for which no specific allegation of criminality had been received. A vigilant audit staff would perform just such an examination, recommend preventive and corrective measures, and also refer any evidence of wrongdoing to the penal authorities. A separate authority, which has not only criminal justice but also anti-corruption audit responsibilities can provide a public image of independence, and can identify, expose and lead to the correction of situations where the vulnerability to corruption is unacceptably high.

H. Employee motivation

27. Not only the public but also government employees need to be educated in ethics. Employees must be instructed, with periodic retraining, on what the ethical obligations of government service require. In this area, precision

and subtlety may have to be sacrificed to clarity and enforceability. It may be better to allow an employee to accept any type of hospitality in the form of food or drink, or to flatly prohibit acceptance of any hospitality at all, rather than to promulgate tortuous rules based upon the value, intent and nature of the acquaintance, which allow very compromising relationships so long as they are carried out artfully. Employees should receive the same message from government deeds as they do from ethical exhortations by their superiors.

28. Adequate resources should be expended to employ a competent work-force and managerial staff at a living wage. When government salary levels beget the question of how a person with a family can live on that income, a society is inviting corruption. When a clerk in a public office does not earn a subsistence salary, he will leave, cheat on his hours of work, steal, extort or take bribes. When an agency head making governmental decisions comparable to those of a corporate executive receives a salary comparable to that of a corporate clerk or manual labourer, the occasion for corruption is there, simply awaiting the right temptation. When a Government fails to pay salaries roughly commensurate with responsibility, it admits that governmental functions are not worthy of respect or professionalism and can be performed by anyone, no matter how poorly paid. If that attitude is communicated, the elements of altruism and idealism that bring some employees into government service are rejected, and the moral tone of the work-force is thereby lowered, while at the same time a certain moral reward is eliminated that could otherwise partly compensate for any disparity in pay.

I. Internal reporting procedures

29. A well-motivated civil service with strong standards of professional integrity can do much to resist abuse of office so long as its code of professionalism is not warped by a mistaken sense of solidarity or a defensiveness against acknowledgement of occasional wrongdoing. Institutions with effective integrity programmes generally have well-developed procedures to deal with potential dishonesty and the complicating factors of supervisory and personal relationships.

30. Procedures should be developed that impose on every member of the government establishment clear obligations and criteria as to what constitutes a reportable incident or allegation and to whom and how the report must be made. Such rules have the effect, when observed and enforced by management, of protecting employees from allegations of disloyalty, breach of friendship, self-promotion or bad judgement. Each organization can develop rules suitable to its own culture and counterpart organizations. Employees may be required to report to a supervisor at a certain level unless that supervisor is alleged to be involved in wrongdoing. One central point of report, an ethics officer for the entire organization may be designated as the primary point of referral or as an alternate contact when the allegation touches the supervisor who would normally be the primary recipient. The rules should require the creation of a permanent record by the maker or recipient of the allegation to permit subsequent accountability. The channel of transmittal to the appropriate investigating authority should be clear, with time-limits and explicit standards governing which allegations must be referred for review by a criminal justice authority. The primary goal is either for allegations to be brought promptly and accurately to the notice of someone at a responsible level of management, who then has the responsibility of following specific standards to decide whether to involve a criminal investigating authority, or for them to be submitted directly to such an authority by the employee.

31. A secondary goal is for the witness-employee who receives a citizen's complaint or even submits personal observations to remain as neutral as possible, acting as a messenger motivated by duty and not as an accuser. In this way, tension between the employee and the subject of the allegation is reduced to a minimum. To accomplish this, a corollary rule is necessary: the initiator of the report should not attempt to corroborate or disprove the allegation or suspicious circumstances. Any investigation to corroborate an observation destroys the neutrality of the reporter, who is no longer performing a reluctant duty but is doing the work of other authorities out of personal interest. An inquiry to rebut an allegation of apparent criminal conduct is also to be avoided, because the discretion to decide whether an investigation is warranted and whether an allegation has been disproved or satisfactorily explained lies with higher management or the criminal justice authorities and not with the employee making the report. If an anti-corruption authority to which the matter is referred decides to seek the employee's co-operation to secure additional evidence, then the desirability of doing so can be discussed by the employee, a supervisor and the investigating authority. If action is then taken by the employee, it will be obvious that it is at the direction of the investigating authority and agency management, and not on the employee's own initiative.

32. Somewhat more latitude should be accorded to supervisors or management officials in the reporting chain. Their broader perspective and objectivity may permit the initial allegation to be amplified by relevant data reflecting prior complaints or disciplinary actions against the employee for similar misconduct, or a history of animosity between the complainant and the target of the allegation. These facts may be necessary to a fully informed decision whether or not to conduct a criminal inquiry. Even action at the supervisory level should be limited to a discreet accumulation and transmittal of existing data, so that investigative options are not foreclosed for the criminal justice authority. What is almost always to be avoided before transmittal to the investigating authority is a confrontation of the suspected party with the substance of the allegation. The question of what constitutes an allegation or an observation that must be reported should be dealt with in employee manuals and training sessions. Different formulations are possible, and the standard may be difficult to put into words, but it might focus upon whether: (a) an observation has been made or an allegation received; (b) whether it has been made by a person in a position to have reliable knowledge; (c) whether it involves conduct that would constitute wrongdoing meriting investigation; and (d) whether it occurred as the reporting party understood it or as it would appear to an impartial observer.

J. Disqualification

33. As an administrative precaution in sensitive situations, as a preventive measure against corruption and as a means of protecting the reputation of employees and of government operations in general, disqualification has much to recommend it. The motivations and merits of a decision are not relevant, only whether impartiality has been preserved by the withdrawal of any officials who have any personal or financial interest in the issue. The rule of disqualification is easy to administer and can easily become a moral imperative: when in doubt, disqualify! If vigorously applied by policy-makers who set an example for subordinates, one of the principal causes of public distrust of government might be reduced. Such public distrust arises from the conspicuous concentration at the seat of government, within easy view of the news media, of political parasites, so called influence-pedlars. Often trading on a personal, political or business acquaintance with officials in power, these persons earn fees through express and implied representation that they can

secure access to decision-makers and exert influence in favour of their hopeful, sometimes gullible, and always advantage-seeking clients. In a governmental culture where disqualification for personal or financial interest has become the norm, such tactics are not only an embarrassment, they become unproductive. The influence-pedlar who continues to boast of his or her ability to influence an office-holder because of personal, official or political familiarity virtually accuses the office-holder of a criminal offence or administrative violation by failing to withdraw from a matter in which the asserted personal friendship would be grounds for disqualification. Moreover, disqualification regulations provide a useful defence mechanism for the honest official, who can invoke them against those attempting to influence his or her decisions.

K. Consequences of pending allegations for personnel

34. Some would say that even anonymous allegations may properly be taken into account in personnel decisions and that one should not risk promoting a person under suspicious circumstances or while an inquiry is under way. The obvious inequity of such an approach is that a disgruntled individual legitimately compelled to abide by certain regulations or standards may be responsible for false accusations, or a rival for a supervisory position may know the personnel system well enough to manipulate it so as to exclude the honest official from a promotion opportunity by making or provoking a disqualifying allegation.

35. A preferable approach may be to treat anti-corruption inquiries as having no effect on personnel matters unless and until concluded adversely for the employee. A compromise position might temporarily bar consideration of a person under inquiry from promotion, but would permit only temporary personnel assignments until the inquiry was completed. It is frequently impossible to impose arbitrary time-limits on any inquiry, even if important personnel actions are thereby delayed. However, some reasonable outside limit may be fixed after which the employee would again be eligible for favourable personnel action, subject to removal if the continuing investigation proved well-founded. What should be avoided is the susceptibility of a personnel and internal inspection system to manipulation by allegations or continued investigations when no productive investigative results are reasonably anticipated.

L. Means of countering intimidation

36. Sometimes physical threats may be made, the severity of which depends upon the personalities involved, how accustomed they are to the use of violence, the scope and profitability of the suspected corruption, and the probability of sanctions. When the threat of violence is severe, all of the countermeasures available to deal with threats from terrorists, organized criminals and narcotics-traffickers may have to be considered. A programme may be necessary that would allow witnesses to be protected or relocated. The investigating authorities and their families may need to be housed for months or even years in secure military installations. Both office and home telephone calls may have to be received over a recorded police line. A pool of prosecutors and investigating magistrates may be developed, as in the "Palermo anti-mafia pool", to diffuse responsibility and to prevent one person from becoming the sole institutional memory and solitary target. A special centralized and easily defended court, whose members are chosen for their invulnerability to intimidation, may be created. Diplomatic or academic assignments abroad may and are being used as a combination of reward and cooling-off period after a particularly sensitive and dangerous investigation.

37. Other threats may be more subtle: suggestions of a diminution of career opportunities, of bad results in future matters before a certain court, or of unfortunate budget consequences for the investigating unit. These are easy to convey in terms that make criminal prosecution difficult, but are clearly understood by civil servants. A way must be found to deal with these subtler forms of intimidation, the thinly veiled suggestions that if an employee were to pursue certain serious allegations, his or her reputation would suffer and professional advancement would be impeded. In a society in which anti-corruption authorities are vulnerable to retaliation, citizens rely almost exclusively upon individual courage. Clearly, it would be far preferable to develop and nourish an institutional culture of independence and professionalism in criminal justice authorities, which would reinforce the strong and compel the weak to rise to the group norms of honesty and integrity. Such a culture requires independence. If anti-corruption inquiries are carried out by an investigating magistrate, then the principles of an independent judiciary can help to insulate the magistrate from unwanted contacts and undesirable pressures.* If the anti-corruption authority is a police or prosecuting body, ways must be found to ensure independence from improper influences within the executive branch of government.** In special cases, the legislative branches may create their own anti-corruption committees or staffs. Periodic and public reports to the legislature summarizing the activities of anti-corruption entities and emphasizing difficulties encountered or efforts to obstruct its inquiries should be mandatory.

38. In all of these cases the sine qua non is a power figure dedicated to independent investigation of an allegation on its merits, who will protect the anti-corruption authority from improper pressures or will allow it space to develop sufficient organizational strength, and institutional and public support, to resist and ignore threats of career retaliation. This strength may be enhanced by a career service. A well-educated, well-trained civil service, which provides a ladder of advancement sufficient to attract and keep first-rate people and to give them authority and responsibility, can obviously do much to develop internal resistance to outside influences, including corruption. What is essential is the development of a tradition of professionalism in government, in the sense of an organized body of knowledge on the conduct of government, whether imparted academically or acquired by experience, together with a set of ethics recognizing that because of its power, the profession of public administrator has special responsibilities to the citizenry, including an obligation to resist intimidation.

M. Codes of ethics

39. Additional obligations of the government administrator can be derived from sources such as the Principles of Public Service Ethics of the International Institute of Administrative Sciences, which coincide with the

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*See the Code for Conduct for Law Enforcement Officials (General Assembly resolution 34/169). See also the draft Guidelines on the Role of Prosecutors, which will be before the Congress (Official Records of the ECOSOC, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/116, annex.

**See the Basic Principles on the Independence of the Judiciary (Seventh United Nations Congress on the Prevention of Crime and the Treament of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2).

lessons of practical experience. Chief among these is the duty to perform a full day's work for a full day's pay. This means that employees must serve the public and not resort to or profit from interminable delays that provoke people into offering gratuities merely to encourage the performance of what should be a duty. Any special fees paid for services should go to the State, not to employees. Any additional compensation paid to the employee should be based upon his or her productivity and not upon the willingness of citizens to pay for services, as such a standard invites extortionate practices. Ultimately, professionalism in government may mean no more than simply justifying public trust by putting the interests of the citizens and the government above private interests.* Fidelity to that principle would limit the conflicts of interest, favouritism, gift-taking and nepotism that make government distrusted in so many nations.

III. PROCEDURES FOR THE DETECTION, INVESTIGATION AND CONVICTION OF CORRUPT OFFICIALS

A. Defining tasks and resources

40. When an investigating authority has to deal with a case of suspected corruption, certain fundamental management questions may need to be resolved. If the investigator's jurisdiction has been previously defined, and the matter arises within it in a routine manner, for example through a police or citizen report to an investigating magistrate, then little discretion or room for manoeuvre is left. In cases of corruption, however, the need is often felt at the policy level to make new or special arrangements, as mentioned earlier (chap. I. sect. G, above).

41. The investigator brought into a corruption investigation with a new or extraordinary responsibility will often find the situation very fluid. Occasionally a timetable will have been announced for the investigation by a policy-maker with little conception of investigative realities. More frequently, the policy-maker will be happy to transfer not only the investigative responsibility but also the responsibility for placating news media and public interest to the new anti-corruption authority or supervisor. Policy-makers may be unaware of the way in which a corruption inquiry is to be conducted and, being perhaps relatively uninterested in the matter, they may be willing to agree to any reasonable-sounding terms so long as the problems of the moment, the media or legislative inquiries, disappear. Consequently, a new or specially appointed anti-corruption authority may have the unaccustomed bureaucratic luxury of negotiating or defining the scope, resources and configuration of the unit.

42. The investigator who promptly analyses the anticipated needs of the inquiry to be conducted may have an unprecedented ability to secure them in the midst of a public clamour that effective action be taken. This is when it is necessary to strike while the iron is hot. During the appointment process or in a subsequent inquiry, most policy-makers are loath to let it seem that they have refused to grant the new authority the resources that it insists are necessary to the investigation. Even more damaging would be a situation in

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*In accordance with the recommendations of the Interregional Seminar on Corruption in Government, held at The Hague from 11 to 15 December 1989, a draft model international code of conduct for public officials is now being prepared.

which the policy-maker risked the embarrassment and suspicion that would result from it becoming publicly known that the designee had declined to serve because he or she had been denied adequate resources to do an effective job. But once the attention span of the media or legislature has lapsed and new crises have claimed public attention, there is little reason to re-evaluate or enlarge the resources or power previously given to the anti-corruption unit or investigator, and even a resignation or request for transfer by the supervisor is unlikely to be as feared as it would have been initially. If decrees must be issued to create the authority, they should be reviewed with the designee to ensure that all necessary provisions are included. Special attention should be paid to any potential overlap and conflict with other agencies.

43. The experienced investigator will also foresee areas of conflict with the targets of the inquiry and with the appointing authority itself, and will attempt to secure binding commitments in all problem areas. If it can be foreseen that an intelligence agency will be reluctant to produce information in an inquiry into financial misconduct, it would be wise to secure a binding commitment, from a policy-maker with power to enforce it, that necessary dossiers and witnesses will be provided. A request to investigate alleged bribery in one small aspect of a massive and highly suspicious contract might deal only with the tip of the iceberg, while a mass of other corrupt practices lurk just beneath the surface. The investigator must then make a value judgement concerning the scope of the authority's mission: for example, whether it should be narrowly confined, that is to say, to the initial corrupt act of bribery or embezzlement, which may be proved without obstacles because only persons at a low level are involved, or whether, in recognition of the probable breadth and volume of corruption in the programme, a broad mandate should be sought. If the latter, riskier, course is chosen, and it develops from the inquiry that the initial allegation was representative of systemic corruption at high levels, initially supportive policy-makers may become less enthusiastic. This may not in itself be an indication of corruption. Rather, it may simply reflect the fact that an anti-corruption authority may be created or designated as much to reduce a public relations problem as to secure punishment for wrongdoers. The unpleasant consequence of investigative results that promise even more adverse publicity may simply not have been seriously thought through and cannot be expected to be welcome. In certain societies, accusations of misconduct by the investigating authority are routinely used to derail corruption inquiries, particularly if the practice is to suspend personnel or assign them to other duties while such an allegation is being investigated. When such a counter-attack is probable, it may be necessary to seek an agreement that there will be no suspension or transfer during the corruption inquiry or that it will occur only under rigid guarantees.

44. In addition, if requests for foreign evidence, tax or personnel records, or other official documents present thorny legal issues or could be subject to obstructive delays, expeditious and guaranteed procedures should initially be demanded as essential. If high-ranking officials are potential witnesses but can be expected to evade testifying or producing records, the appointing decree should order the co-operation of all public employees under penalty of forfeiture of office and benefits. Many other realities of legal competence and organizational and supervisory relationships will dictate what powers and resources an anti-corruption authority will need to ensure at the time of its establishment.

45. Diplomacy may dictate that more can be gained by candid exposition and polite requests than by demands and conditions. It would, however, normally seem highly desirable that there should be a written record, documented in correspondence and aide-mémoire, to demonstrate that the powers in charge were

put on notice as to what resources were necessary. Such a record would weigh upon policy-makers' decisions. Subsequent inquests and attempts to impose accountability are common consequences of corruption scandals. A written record will protect the personal and professional reputation of the anti-corruption supervisor or authority, who asked for but was denied adequate tools to do a professional and successful job, and will not enhance that of the policy-maker who denied the requests. This question of protecting the investigator and the investigating unit's professional reputation looms particularly large when the probabilities of an unsuccessful outcome and accusations of a cover-up or of incompetence are greater than the probabilities of success.

46. The most difficult tasks are likely to be inquiries into internationally funded programmes or foreign conduct in which illegality is feared or suspected, or attempts to trace international bribe payments to determine who the recipients were, whether the funds have been dissipated, or whether property remains to be confiscated and forfeited. An anti-corruption authority may anticipate an inability to uncover the true facts owing to the consensual nature of bribery situations, the passage of time, the subtle ways in which bribed influence is exerted, and the sophistication and resources available to shield the criminals. In such situations the appearance of impropriety is proverbially as damaging to public confidence as is the impropriety itself. Duty may require that a sensational inquiry be conducted, such as exploration of probable bribery of high government officials or a search for the missing wealth of a looted country, even though a realistic prognosis is unfavourable. When such a high-profile inquiry is unproductive, the believers in grand conspiracies and those who can profit in a political or journalistic way by alleging a cover-up can be relied upon to do so. Consequently, precautions are necessary when venturing into any high-risk corruption inquiry or pursuit of forfeiture. The written record should document the fact that the powers and resources sought are essential and have been granted. The inquiry or search for assets may need to be conducted even more exhaustively than would be normal to preclude allegations of laxity. If forfeiture and tracing efforts require discretionary action, any compromise or decision not to seize must be decided by the highest possible authority on the basis of fully documented justifications.

B. Covert and consensual nature of corruption

47. The difficulty of securing useful information about official corruption is a basic problem. Complaints are often scarce because of the inherently covert and consensual nature of most corruption offences. Bribery excites no complaint, as both guilty parties profit from their illegal arrangement. Extortion may involve an unwilling victim but produce no complainant because of the citizenry's lack of confidence in the anti-corruption process. A further difficulty is the reality that concentrations of wealth and corruptible influence are likely to occur in highly complex and specialized government activities. As a consequence, fraud can be easily camouflaged so that it will be invisible to the non-expert, including the average investigating authority.

48. Two consequences arise from the consensual and covert qualities of corruption and its often highly technical and specialized nature. First, a means must be found to make technical expertise and usable information available to the anti-corruption agency. Secondly, that authority must consider seriously what type of targeting strategy is appropriate to the kind of corruption being confronted, subject to the constant reminder that, by its very nature, information is likely to be difficult to obtain. The question of securing technical

expertise is intertwined with the entire subject of guaranteeing the essential flow of information about corruption from within agencies and from the public at large.

C. Selection strategies

49. Exposure of corruption must be both publicly and governmentally generated, and both from within programme agencies and by the criminal justice authorities. In responding to referrals from programme agency auditors or to complaints, anonymous allegations and news media exposés, or in pursuing its own initiatives, a law-enforcement authority must, consciously or subconsciously, follow some strategy. The degree to which a strategy can be applied must take into account the principle of mandatory prosecution where that principle prevails. However, in any system, selections must be made as to which matters can be sent to the archives without action because there is no identifiable suspect, or in which cases a lack of grounds to proceed can be resolved through investigation. Among the investigative targeting approaches that may be considered are purely reactive strategies, described here as either a default strategy or one using standards to achieve priority setting; intelligence-based targeting; and a decoy and integrity-testing approach.

1. Default strategy

50. Probably the least defensible approach is a response to the stimulus of a complaint or a news media story based upon the whim of the moment, without any governing standards or master plan. Such responses allow investigative resources to be applied in an uncontrolled fashion to what seems like the most vulnerable or newsworthy target of the moment. This approach, here termed a "default strategy", risks the absorption of substantial resources in cases that are simple to solve or interesting to investigate but have little programmatic impact. For instance, if the level of inventory leakage due to employee theft is 5 per cent, whereas the typical kickback on the purchased materials is 10 per cent, the distortion of priorities is evident, without even mentioning the level of persons likely to be involved in each case.

2. Priority-setting

51. A more defensible and efficient strategy based upon reaction to externally presented referrals and complaints would involve some form of priority-setting according to conscious criteria laid down in advance and consistently applied. For obvious reasons, inquiries and complaints from the legislative branch or arising out of sensational mass media exposés may be accorded immediate attention rather than inquiries not yet in the public domain. Some inquiries can be declined immediately or with minimal action if the offender cannot be identified without disproportionate expenditure of resources. Others may demand immediate action while the offence is still being committed or before crucial evidence is lost. Wrongdoing that is on the borderline between administrative and criminal misconduct can be subject to guidelines, if local law permits, providing for exclusively administrative handling, or summary referral by a criminal justice authority to administrative authorities, if the offence is minor and the sanction is adequate, for example discharge from government service and a bar on re-employment. Establishing and enforcing such guidelines can at least permit the allocation of resources in a consistent and accountable pattern, which can then be adjusted by a process of programme evaluation to meet changing goals or priorities.

3. Advantages and disadvantages of reactive strategies

52. Both the above targeting approaches are reactions to external stimuli. There is no expectation that the law-enforcement authority will create its own investigative opportunities and thereby make the allocation of its efforts independent of complaints and referrals. Such reactive strategies have the negative virtue of being non-controversial. The investigating authority is less likely to be accused of partisanship and to be the target of institutional hostility from an entity under investigation when it is apparent that the inquiry was dictated by a complaint or outside pressure and was not the product of the authority's whim or improperly motivated desire to impair organizational or personal reputations. Nevertheless, purely reactive strategies are subject to criticism because of the inherently covert and consensual nature of most corruption. Exposure and prosecution of only the most blatant and unsophisticated offences may simply perpetuate the status quo, placating public opinion without really exposing or threatening large-scale corruption. Reactive strategies provide no mechanism for exposing the far more costly effects of sophisticated corruption, inviting the cynical conclusion that the system protects the corrupt but powerful official by sacrificing the clumsy petty thief. These anti-egalitarian consequences of reactive strategies and their obvious inability to reach corrupt practices that are well hidden or difficult to comprehend, provide the impetus for developing alternative strategies for target selection.

4. Intelligence-based strategies

53. One alternative strategy, based on intelligence received, may permit some fixed percentage of resources to be applied in a reactive fashion against easily detectable or sensational cases. Its principal focus, however, is on the application of a relatively small percentage of investigative resources to the collection, analysis and generation of criminal intelligence to identify targets with a substantial programmatic impact. Most of the resources are then applied to the development of cases targeted as a result of this intelligence-gathering and evaluation process. Anticipating, or having experienced, frustration and a lack of worthwhile intelligence data as a result of typically reactive strategies, anti-corruption authorities may elect to use traditional investigative and intelligence gathering techniques not merely to investigate reported cases, but also to identify cases to be investigated. The law-enforcement authorities may gather intelligence on the connections of public officials to known criminal elements or may ask that travel and immigration records be provided so that they can select for investigation frequent travellers to particular destinations. Of course, any targeting of individuals can be controversial because of the danger of damage to individual reputations and the possibility of abuse to further a personal, organizational or partisan vendetta. An approach that somewhat reduces those dangers is the risk assessment of a unit or programme rather than of individuals. In the last analysis, the suspects being individuals, their reputations may be hurt by the suspicions that accompany a corruption investigation, and the person responsible for a targeted programme or office can always be blamed for personal or political bias in selecting a target for investigation. This is, however, an unavoidable risk, which can be reduced to a minimum by maintaining the highest possible standards of professionalism, objectivity, discretion and integrity in the investigation authority.

5. Integrity-testing

54. A far more controversial targeting strategy is one that employs decoys and integrity-testing tactics. Examples may include members of a police

integrity unit dressed in civilian clothes, driving rented cars in an apparently drunken manner to ascertain if police officers will stop them and solicit a bribe in lieu of an intoxication test, or the willingness of an investigator posing as a foreign investor to pay bribes to legislators to secure favourable treatment for a proposed investment. The criticisms of these devices are substantial. They arguably express an intolerably cynical view of how law enforcement should operate, which can damage public respect for the law; a decoy may be seen as manufacturing simulated crime when no real crime is provable; and it could also be argued that the weakness of human nature may permit law enforcement to target, trap and destroy almost any opponent, political, personal or ideological, that it chooses.

55. As a response to these criticisms, the analytical observation may be made that hidden corruption can continue indefinitely until exposed, and that no other technique has the capability to penetrate the secrecy of bribery and other abuses of office. The pragmatic argument that accompanies the theoretical analysis is that decoys and integrity-testing have proved effective and have on occasion revealed depths, and heights, of corruption never previously exposed. Proponents of these tactics generally concede that limitations must be placed on the types of subterfuges and inducements used. While there is little agreement on how these limits should be enforced procedurally or even how they should be defined, there is also strong agreement that such tactics should be regulated by clear guidelines.

D. Plan of action

56. Regardless of what targeting strategy it follows, a law-enforcement or criminal justice unit must, at some point, decide how to pursue a particular investigative opportunity, and how to deal with the government entity in which corrupt activity is suspected. In corruption investigations, it is unfortunately common for a polarized atmosphere to prevail, the law-enforcement authority adopting a righteous attitude that dishonesty is the norm outside of that authority, and the target entity complaining that its many honest employees are being unfairly criticized in the news media for the suspected misdeeds of a few. In view of the infinite variety of situations that can arise, it would be helpful to attempt to identify some general principles that a corruption-investigating authority should consider in organizing and pursuing an inquiry and in dealing with a suspect entity.

E. Publicity and the news media

57. All investigations of corruption should be conducted in a discreet and professionally responsible manner, although what constitutes a discreet and responsible inquiry will vary. It will never include those occasions in which detailed or sensational descriptions appear in the news media of allegations being investigated, based upon anonymous sources who are obviously knowledgeable. Such leaks are sometimes defended as a means of bringing forward additional witnesses and evidence, or of exposing and deterring wrongdoing when the corrupt officials may escape criminal prosecution because of the inability to assemble prosecutable evidence. The goal of securing additional evidence may be legitimate but must be pursued in conformity with the laws of investigative and judicial secrecy. The goal of exposing wrongdoing is only rarely permitted by laws that allow investigative findings not constituting a chargeable offence to be publicly reported, almost always under judicial or legislative supervision. In the absence of such laws and without rigorous compliance with their procedures, the disclosure of information capable of damaging reputations through unofficial channels seems tantamount to an abuse of authority, to an infliction of summary punishment by the investigating authority where no guilt has been proved.

58. The media play a potentially useful role in enlisting public and ultimately political support for necessary anti-corruption resources and legislation. They also have a legitimate role, as surrogates for the public, in guaranteeing transparency and accountability in government and particularly in the criminal justice system. Yet they are not an element of law enforcement and their interests are not congruent with those of responsible investigators, prosecutors and judges. When the laws and procedures of a culture dictate disclosure of investigative action, and the resulting publicity inhibits criminal conduct or increases the available fund of intelligence and evidence, justice is being served. When an investigation or a suspect is still protected by judicial secrecy but is disclosed because someone within the investigating authority is impatient with the delays and restrictions imposed by secrecy laws and implements a personal judgment that exposure is warranted, justice is not served. Such situations provoke the understandable suspicion that personal or institutional favour is being sought with the media. Since they may result in illegal damage to reputation, they should be avoided and discouraged by effective administrative or penal sanctions.

F. Dealing with the subject of investigation

59. When an anti-corruption authority receives information warranting inquiry, it must be determined which investigative options have been foreclosed. Thus, from the investigative point of view, a dominant consideration is that disclosure of law-enforcement interest should be avoided while there is any possibility of productive covert action. Occasions may arise when evidence of admissions, acts of concealment or further criminal conduct may be secured by combining covert surveillance with overt but partial disclosure of investigative interest. Those situations may be infrequent but, like a completely covert investigation, they require that the investigating authority should control the extent and timing of any disclosure. Even when investigative action becomes overt, secrecy is advantageous because it minimizes the likelihood of destruction of evidence, intimidation of witnesses and fabrication of defences.

60. Given the advantages of secrecy, it is a great temptation for an anti-corruption authority to adopt a garrison mentality, assuming that integrity exists only within its ranks and that anyone affiliated with a unit or activity under inquiry must be viewed as under suspicion. Such an attitude is tolerable, though not necessarily healthy, so long as it is not manifested in counter-productive fashions, the most common of which is the failure to inform the persons responsible for a programme being investigated, even if they are not under suspicion. During a stage of covert inquiry, notification may be possible only in generalities and only to a person who will not permit the information to reach the targets. Since the purpose of the contact is to give notice but control its dissemination, the notification must be to a person who is under no obligation to inform others and is thus able to undertake a commitment of secrecy. Clearly, personal acquaintance, a good reputation for discretion or comparable guarantees of reliability are necessary before such a confidence can be imposed. Once overt investigation commences, the notification becomes less a matter of reposing a confidence than an essential bureaucratic courtesy. It is a self-serving means for the inquiring authority to discharge its function and simplify its task.

61. The limits of any notice or explanation to persons responsible for the activity under inquiry must always be limited, on a "need-to-know" basis. Courtesy may dictate that initial contact be made by a law-enforcement authority of rank comparable to the executive being informed. The explanation proffered may detail how non-disclosure of investigative direction and findings is compelled by judicial secrecy and the need to protect members of the recipient

organization from any suspicion that they might transmit investigative information to the suspects. It may convey little real factual data, other than what co-operation the investigating authority wants to assist it in its inquiries, but it aligns the programme agency leadership with the anti-corruption authority and permits it to preserve its authority and self-respect vis-à-vis the public and within the agency.

62. Given the risks involved, it may be difficult to understand why an investigatory authority should notify those responsible for a suspect organization or activity of the existence of an inquiry. In the overt stage, the availability of resources and increased investigative efficiency that comes from enlisting the assistance of the target organization can be substantial. Such an organization has little choice in terms of public relations save to co-operate. The suspects may be removed from positions where they can obstruct the investigation and assigned to temporary duty elsewhere. Resources of the programme agency can be levied upon to assemble and screen documents or other evidence, even though the criminal investigators make the final examination. Moreover, honest persons with pertinent knowledge or evidence may be found in almost any organization, no matter how corrupt, and it is poor practice to denigrate the institution and provoke a hostile and defensive reaction by even its honest employees, who may already be facing substantial disincentives to candid co-operation.

63. Bureaucratic self-defence can also dictate that those responsible for a suspect activity or unit be notified, even in the covert stage. No investigation is guaranteed success. If a covert operation has a substantial risk of being disclosed in an embarrassing manner, if the motives of the investigating authority can be made to appear suspect, or simply if the investigation will be controversial, the investigating authority must consider notifying the person responsible for the target agency. Such notification benefits the target agency by demonstrating, when events later become known, that the agency itself, or at least the policy-maker responsible for its operation, is a trustworthy element of government, that only some individuals or activities are under inquiry, or at least that the policy-maker is co-operating in improving a corrupt situation. Indeed, an anti-corruption authority that acts without regard for such considerations may ultimately find itself at odds with political authorities who see it as an unrestrained and irresponsible destroyer of organizational or personal reputations. Moreover, consultation in which an agency head is briefed on the general premises and thrust of an inquiry and no objection or constructive suggestions are voiced precludes later criticism that the investigation was ill-founded, incompetently planned, or would have been successful if only more consultation and co-operation had been sought. Finally, there is a legitimate public interest in ensuring that corruption is not permitted to continue any longer or any more extensively than is necessary to permit the development of a sound prosecution. Indeed in some situations, (for example corrupt tolerance of the disposal of hazardous wastes, of transportation safety violations, of drug importation and distribution), immediate termination of the practice, whether accomplished administratively or by criminal justice measures, may be as important as any ultimate conviction.

IV. LEGAL PROVISIONS FOR THE FORFEITURE OF FUNDS AND PROPERTY DERIVED FROM CORRUPT PRACTICES

A. Concept of forfeiture

64. In recent years, a number of legal systems have come to attach new significance to procedures to confiscate and forfeit property associated with

and derived from illegal activity.* The need to combat organized criminal activity, especially narcotics trafficking, more effectively has caused confiscation and forfeiture to be regarded with new respect as a strategic weapon, as a total economic disincentive to organized criminality for profit, and as a means of identifying and taking away the financial advantages, and the resulting power, of anti-social conduct. In some legal systems, the new concept has necessitated a reformulation of forfeiture from a legal mechanism focused on an identified object to a punishment imposed on a person but measured in terms of identified objects or a fungible amount of money. More frequently, the forfeiture concept was already broad enough to reach beyond seized objects to a wrongdoer's other assets. What was crucial in both situations was a result that permitted the State to take away all economic advantages gained through crime, not just the direct physical product of one offence and not just a fixed fine that might be wholly disproportionate to the much larger profit derived from criminal activity. In this manner the fruits of and incentives for crime were both removed.

B. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, as it relates to forfeiture for non-drug offences

65. The value in narcotics law reinforcement of the forfeiture strategy set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.1 and 2) has been broadly accepted. The Convention, using the term "confiscation" in the broad sense of both seizure and transfer of ownership to a Government, includes comprehensive provisions to ensure that proceeds derived from drug-related crime and assets illicitly acquired are confiscated. The Convention also includes provisions in article 5 regarding international co-operation on these issues.

66. The relevant provisions of the Convention represent the latest development in the forfeiture or confiscation strategy. Although limited to offences related to drugs, such provisions are under consideration in numerous other draft documents of the United Nations and in multilateral and bilateral treaties not restricted to drug offences. National legislatures are increasingly enacting forfeiture legislation aimed at both domestic and international situations, and not necessarily limited to drug offences. Any economically motivated form of criminality is vulnerable to the forfeiture remedy, and corruption is a quintessential economic crime, against which domestic and foreign forfeitures would have great effect. Moreover, because of the potentially vast amounts involved, there is a strong economic argument for ensuring that national wealth diverted by corrupt rulers can be traced, seized and forfeited.

1. Problem areas

67. The provisions of the Convention are a useful means of identifying some problem areas likely to be encountered in establishing and implementing protocols that are broad enough to apply forfeiture effectively against corruption and its proceeds. The first is that of banking secrecy, which is precluded as a grounds for refusal to act by article 5, paragraph 3, of the Vienna

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*The term "confiscation" is often used interchangeably to mean either the seizure of property or the transfer of its ownership to the Government. In some societies, it has a negative connotation. Forfeiture is used less to denote the physical seizure of property and more to signify the process of transferring legal title to or declaring ownership in the government.

Convention. There seems to be a global ambivalence on this issue, some traditional tax havens having adjusted their procedures to allow more access to accounts and greater possibility of confiscation, while other jurisdictions have attempted to capture a greater share of the international market for confidential banking and financial services. There are obviously more factors at play in such decisions than purely criminal justice considerations. Once properly defined, however, it would certainly seem that corruption offences are no more deserving of banking secrecy protection than are offences involving narcotics drugs or psychotropic substances.

68. In article 3, paragraph 10, the Convention addresses itself to several thorny issues on which it may be easier to reach a consensus with respect to crimes involving narcotics than would be the case for those involving corruption. There are few maxims more likely to generate disagreement in discussions on international penal law than the political offence exception. Its existence is a universally accepted precept of customary international law; its contours are a welter of confusion among the domestic statutes, treaty provisions and customary law of individual States. It is variously defined by the nature of the offence, for example, violence committed in furtherance of and in proportion to the political aims of an organized armed revolt, or by the motive of the requesting State, namely, punishment in a politically discriminatory manner. One of its common uses is to protect former rulers from being extradited to be prosecuted for offences that are not crimes against humanity and for motivations relating to political partisanship. It can readily be imagined that a new régime desiring to secure the return and punishment of former officials could request extradition based upon alleged corruption offences, which might be accurately alleged or fabricated or might constitute legally dubious attempts to hold an official responsible for some dereliction of a subordinate or for some imprudent but not technically criminal expenditure. Fortunately, however, forfeiture is not as sensitive an issue as extradition. Property values, and not human liberty, are at stake. The mere existence of immense amounts of forfeitable wealth under the refugee official's control permits some preliminary judgement on the probability that wrongdoing was committed in its acquisition. Finally, as provided in the Convention, a country may subject international agreements to the interpretation of its domestic law. Thus, a corruption offence might not be categorized as a political offence excluded per se in a treaty or convention, but domestic courts could decline to order forfeiture based upon the finding in an individual case that the paucity of evidence and surrounding facts call for the conclusion that the particular request for forfeiture is politically motivated.

69. The related fiscal offence exception dealt with in the Convention is conceptually more of an obstacle. It frequently operates to shield the filing of false tax returns or the failure to report tax liabilities truthfully, which some countries regard as regulatory infractions rather than penal violations. Corrupt diversion of government resources may be as prevalent in some situations as tax evasion by businessmen, and may be expressed in analogous false declarations, filings and reports. It is to be hoped that States granting a fiscal offence exception to extradition and mutual legal assistance measures such as forfeiture will recognize the special threat posed by corruption to other governments and will treat it as an aggravated offence for which the fiscal offence exception would not apply. Unfortunately, given the conceptual basis of the fiscal offence exception and the fact that it is often found in the law of nations seeking to attract capital by offering banking secrecy, that exception may create problems for corruption forfeitures unless concentrated international disapproval succeeds in limiting its prevalence and scope.

2. Onus of proof

70. The Convention also provides a useful model with respect to reversal of the onus of proof,* a procedural mechanism that can be of immense domestic significance in anti-corruption efforts. This approach has both tactical and strategic appeal. As a tactical weapon it offers a means of forfeiture which requires relatively few resources and involves little risk of unfairness or error. Strategically, placing the burden of identification and explanation of assets on the possessing official is tantamount to conducting psychological and tactical warfare against corruption. The constant fear of being required to account for ill-gotten possessions should either give rise to a state of anxiety, which would have a deterrent effect, or it should leave the corrupt office-holder with the dilemma of whether or not to report the matter. If the official wishes to have a plausibly legitimate explanation for all assets when called to account, a cover must be fabricated and he or she may have to submit a report at or about the time the bribe or extortion occurs, in order to provide a consistent historical explanation for possession of the camouflaged asset. This way, however, precipitate an unwanted inquiry into corrupt relationships and activities, thus demonstrating the utility and desirability of a burden-shifting rule in conjunction with reporting requirements. Careful consideration must nevertheless be given to the principles of due process, which in many jurisdictions are an integral part of the constitutional protection of human rights. Reversal of the onus of proof may, therefore, have to be restricted to the evidence and be made rebuttable in order to withstand any possible challenge on a matter of constitutionality.

3. Currency control and money-laundering

71. The Convention requires money-laundering or recycling transactions in drug-related funds to be criminalized. Such measures would be particularly valuable to anti-corruption programmes, because in major frauds upon the public treasury the offending officials are often eager to insulate their ill-gotten gains from discovery or from a change in political climate that might increase its vulnerability to seizure. Laundering of money within a country to disguise its origin and transfers to foreign accounts and investments have now become routine. Effective currency control measures can help to identify and repress any form of economic crime, including corruption, and it is to be hoped that such measures will not be limited, either domestically or internationally, to the drug trafficking.

V. ECONOMIC SANCTIONS AGAINST ENTERPRISES INVOLVED IN CORRUPTION

A. Corporate reporting and sanctions

72. Reporting mechanisms should be developed to impose upon persons doing business with the Government, or licensed by it, an obligation to disclose information, generally of a financial or business nature, which would help to warn of dishonest official activity. In this area, sanctions by administrative authorities may not merely reinforce the threat of criminal prosecution but may constitute an even more credible threat. When criminal sanctions are the only deterrent, experience leaves little hope that competitive corporations will fear bribery prosecutions sufficiently to forgo the desired commercial advantage.

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*See article 5, section 7.

73. The addition of a bribery-reporting requirement does not change the equation when only the criminal justice authorities have the competence or motivation to expose and act upon the bribery or its non-disclosure. The simple reason is that the degree of secrecy necessary to make a bribe succeed, protecting it from the knowledge of competitors or of the contracting official's co-workers, guarantees that an outside criminal justice agency is unlikely ever to suspect the bribe, let alone be able to prove its existence. The picture changes when regulatory or taxing agencies, with access to the corporation's inner financial world and with substantial regulatory power, have an administrative interest in identifying and imposing sanctions for bribery or other corrupt conduct, or for failure to disclose such misdeeds.

74. An obvious example involves taxing authorities who routinely audit business financial records and expenditure. They have an incentive to uncover bribes, disguised as fictitious expenses, which will then be disallowed as tax deductions, increasing corporate tax liability, and perhaps tracing taxable income to a recipient. A corporation licensing authority, which also has the power to decide whether the corporation continues to do business and to issue stocks, bonds and other securities, on the basis of access to corporate financial data, may have a regulatory stranglehold. When periodic reporting to such authorities is required, or questions must be answered about suspect transactions or activities, there is a decidedly increased probability that wrongdoing will be discovered. That probability, and the relative likelihood of administrative sanctions compared with the improbability of criminal sanctions, can deter bribery as too risky a marketing strategy. It can also play upon the divergence of interests within a corporate structure and allow the conscientious, reform-minded or simply self-protective auditor or board member to insist upon accurate reporting on the required forms. Once that result is accomplished, the corrupted official would obviously be vulnerable, with few defences.

75. Obligations similar to the reporting requirements imposed upon government employees as a condition of employment should also be imposed by administrative or regulatory agencies on all persons and entities seeking public contracts or public licences or concessions, to reduce corruption substantially. Depending on the needs of the situation, a vendor can be required to make all premises and records available for government audit, or to report any fees paid in connection with a public contract or near to the period of holding such a contract. Anyone doing business with the Government can be required to reveal any involvement with public officials or employees, or persons related to or associated with them.

76. The list of useful informational requirements is endless, but should be limited to those that do not impose so many transaction costs as to be uneconomical, thereby discouraging otherwise qualified and honest bidders or vendors. At the same time, enforceability should be a prime consideration. As reporting requirements are spread outward from a core group of government decision-makers to reach private persons and entities doing business with the Government or with the public under government license, the increased size of the reporting environment decreases the probability that the reports will be rigorously reviewed and irregularities vigorously pursued. Accordingly, sanctions for violation should be as self-executing as possible so that lack of enforcement resources will not render the reporting requirements illusory. A government contractor or licensee who has ignored or falsified reports is not likely to represent a large but docile establishment, which meekly accepts heavy financial penalties and debarment from future government contracts. Much more probably, the violators will be a bankrupt entity, against which administrative and regulatory measures are useless, or a major and predatory

corporate enterprise, which will employ every political, financial and legal advantage to obstruct and resist sanctions. The auditing or contract compliance authorities, which must respond to reported violations, should recognize these dangers, as should contract negotiation or licence-issuing authorities. Also, initial governmental action should be clearly made conditional upon acceptance of built-in, self-executing sanction mechanisms. Payment schedules on contracts can provide for a hold-back, a reserve payment to be released only after a final audit and certification not only of contract performance but also of compliance with all anti-corruption clauses. A licensee can be required to post a bond or supply sureties to permit financial recovery in the event of a breach of integrity provisions in the licence. These remedies should be characterized by the simplest procedural steps consistent with administrative fairness, so that the cause and effect relationship of non-compliance and sanction is apparent and its deterrent effect is not diluted by delay. Conversely, cumbersome procedures that make administrative sanctions a prerequisite to judicial action may need to be replaced by a simple judicial finding of prima facie liability. Such a change would speed up prosecution and reduce the potential for the judicial process to be frustrated by corrupt influence at the administrative stage.

77. Since much of the corruption and diversion of resources in developing economies is focused upon the concentrations of foreign development capital or assistance funds entering the economy, special precautions are necessary for those funds. The controls that donor entities or organizations may attempt to impose in practice have irritating aspects, but the underlying desirability of anti-corruption controls enforced by the source and receiving nations, entities or organizations are apparent. In contractual situations, certain notorious instances of bribery in mammoth technology and weapons procurements suggest that the ethical standards of multinational and giant national corporations are constantly in need of administrative and regulatory reinforcement. Owing to the vital national interests involved in defence, technology and development contracts, the play of political interests in both the contracting process and in any controversy over sanctions is unavoidable. Given that reality, bonds or escrow deposits that are readily forfeitable for integrity lapses and are of a sufficient magnitude to have a realistic deterrent effect, or reasonable debarment procedures are particularly desirable measures.

B. Corporate forfeitures

78. Forfeiture, enhanced by modification of the onus of proof regarding the origin of suspect property, can be a powerful deterrent to misconduct by government officials. Confining that remedy to public employees, however, would ignore much of its potential. It is true that payments exacted by a public official from unwilling citizens, directly or through a network of subordinates, can yield substantial proceeds and forfeiture possibilities. Yet consensual relationships are the rule in most cases of major corruption, whether involving deposit of State funds, sale of governmental assets or execution of supply contracts. Clearly, the anti-corruption investigator should seek to trace, seize and forfeit the fee paid to persons for no reason other than their service as intermediaries for the deciding government official. The paying entrepreneurs should also be held criminally responsible for their willingness to engage in corrupt practices.

79. These measures have, however, been demonstrably inadequate. Corporations, trusts and the myriad of modern business structures exist for the very purpose of avoiding personal liability. They have been used to avoid criminal and civil liability by diffusion and deliberate obfuscation of responsibility,

compartmentalization of knowledge, ambiguous or inadequate documentation, and all the other devices that enable heads of corporations to make a plausible disavowal of involvement. Moreover, the probability of extended incarceration for an executive involved in non-violent, non-life-threatening bribery is very unlikely. Also, the chance to skim off a substantial portion of the allocated payoff money is sufficient inducement to secure a "willing" executive. Payoff transactions are often deliberately allowed to be structured so that an aggressive project manager can set a sales and promotion budget and spend it without accounting to higher authority. In this way, whatever means are necessary, no matter how unsavoury (bribery, the use of prostitutes or cocaine, the hiring of private detectives or the discrediting of a competitor's product) can be taken without "corporate" knowledge. If exposed, the executive responsible can resign, or even be publicly disgraced and dismissed, although probably without interrupting the highly favourable pension benefits or severance payments that insure the corporation or its other knowledgeable executives and board members against blackmail. All this provides the necessary incentive for the project manager to continue to accept complete responsibility for the conduct that earned so much profit for the corporation.

80. To gain maximum effect from the use of forfeiture to deter and punish corruption, the remedy must be applied against the economic entities that have most at stake. Executives of a corporation or other business entity are under constant pressure to earn a competitive rate of return without unduly jeopardizing the corporate assets. If the sanction against bribery in connection with a contract or other form of corruption is a fixed civil or criminal fine, the improbability of being discovered or, if discovered, of being convicted, results in the amount of the potential corporate fine being discounted by the various improbabilities until its financial deterrence becomes illusory. When participation in a corrupt activity is formally declared to go to the essence of a contract or other governmental relationship, and the consequences become potentially catastrophic not only for the subsidiary created to shield the corporate parent from full liability but also for that parent multinational corporation, true economic deterrence may begin to be felt. If loss of all of the funds paid under a contract secured by bribery, or all the corporate assets used under such a contract, plus a multiple of several times the amount of the bribe, as well as the corporate charter and ability to do business in the State, or some other doomsday consequence, is feared as a result of bribery, the corporate calculus of whether a sales contract is worth a bribe may be performed with different results.

81. It should also be noted that the individual instigator of a case of bribery cannot be allowed to escape forfeiture. Bonuses or funds directly taken for or from the corrupt activity or arrangement should be forfeited. In addition, consideration should be given to the necessity for punitive deterrence, for a sanction that will discourage an executive from taking the responsibility for acts resulting in profits to a corporate principal. One way to accomplish that goal is to make an executive responsible jointly and severally, that is, equally and independently liable for whatever forfeiture is imposed upon the corporation for which the executive acted. When participation in bribery means that a forfeiture will be ordered that will be large enough to take away not only all direct proceeds of the corrupt transaction but also the retirement, severance and accumulated benefits of company employment, the number of persons willing to risk what will no longer be merely a ritual sacrifice is likely to decrease.

VI. TRAINING AND EXCHANGE OF INTERNATIONAL EXPERIENCE

82. Since corruption appears to be a phenomenon to which no society, developing or developed, is immune, there is a common interest in curtailing and - if possible - preventing it. The funds at the disposal of corrupting forces (especially when they originate from organized or drug-related criminal activities), as well as the power that they generate, are often beyond the capacity of many countries, particularly developing ones. Technical co-operation to countries that lack the resources and infrastructure to combat corruption is, therefore essential.

83. Multidisciplinary training and educational programmes could be developed at the international and regional or subregional levels, in order to pool expertise and resources that are often inadequate at the national level. Technical co-operation, to be provided from the start, could include model courses for universities, business and public administration schools, where available, training seminars for educational staff, and special scholarships or fellowships. Shared standards can form the basis of these programmes and help to find solutions to problems of common concern. International co-operation can also take the form of exchange of data and clearing house facilities, as well as the elaboration of comparative studies, which would assist countries in designing, formulating and implementing joint strategies and collaborative arrangements to prevent and control corruption.

84. The application of the measures outlined in this manual may require specific legislative or administrative reforms not always feasible under the present circumstances or legal structures of a number of countries. In this connection, assistance would be needed to review existing legislation and effect such reforms. In addition, training courses should be devised for judges, prosecutors and law-enforcement officials in order to enable them to deal with new, camouflaged forms of corruption and other economic crimes. The creation of special anti-corruption entities would also entail the availability of expertise and equipment to combine methods already applied successfully with the constant need for the collection and analysis of relevant data, as well as for the exchange of information and experience. The need for a multidisciplinary approach in the creation of these entities has become more and more evident in recent years, owing to the difficulties that investigative authorities are increasingly facing in corruption cases. Especially in the case of transnational bribery and corruption, the sensitive nature of the transactions and the usually high level of the officials involved, coupled with a variety of sophisticated techniques for the transfer and concealment of funds, makes detection of corrupt activities extremely difficult, if not impossible.

85. International co-operation therefore seems very important for securing substantive and admissible evidence and overcoming obstacles created by the differences in legal systems and the existence of banking secrecy laws. Bilateral investigative and judicial assistance treaties are needed to improve the situation and to avoid delays due to the lack of co-ordination in the investigative and prosecutorial efforts of competent authorities, resulting often in impunity of corrupt officials because of the fact that statutes of limitation have run out. Another aspect of international co-operation that deserves attention involves the implementation of model instruments, such as the new model treaties on mutual assistance in criminal matters, transfer of criminal proceedings and extradition, to be discussed under item 5 of the provisional agenda, for which enabling model legislation may be useful, as well as the setting-up of concrete arrangements for their practical application.

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Item 3 of the provisional agenda*

CRIME PREVENTION AND CRIMINAL JUSTICE IN THE CONTEXT OF DEVELOPMENT: REALITIES AND PERSPECTIVES OF INTERNATIONAL CO-OPERATION

Practical measures against corruption

Manual prepared by the Secretariat

Corrigendum

Page 21, paragraph 53

The penultimate sentence should read In the last analysis, the suspects being individuals, their reputations may be hurt by the suspicions that accompany a corruption investigation. Accordingly, the suspects may argue that the investigation was initiated because of personal or political bias.

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At the end of the text insert

Note

1/ See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/104.

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